

HOMELAND DEFENSE

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BEFORE THE

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UNITED STATES SENATE

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HOMELAND DEFENSE

TUESDAY, SEPTEMBER 25, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 11:06 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kennedy, Biden, Kohl, Feinstein, Feingold, Schumer, Durbin, Cantwell, Edwards, Hatch, Thurmond, Grassley, Specter, Kyl, DeWine, Sessions, and McConnell.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning. I thank everybody for being here. I especially thank the Attorney General, with his schedule, for being here. I know how hard he has been working, and I know within his own Department, not only from others who were lost, but part of the Attorney General's inner circle had a terrible tragedy with Ms. Olson. I know the hearts of everybody here have gone out to the Solicitor General for his loss and his family's loss. I know the distinguished senior Republican on the Committee was there at the memorial service, and I agree with him on that.

We want to hear from the Attorney General directly on this. This is not business as usual; this is the people's business. These hijackings resulted in a senseless loss of life and destruction. They were crimes not only against the people who were killed; they were crimes against humanity.

I cannot imagine any country in the world who really cares about humanity not joining with us in condemning what happened. I think we should make it very, very clear that terrorism in pursuit of a political agenda is still terrorism and should be rejected. No matter what the group is, no matter where it is in the world, terrorist acts should be seen for what they are. They are crimes, they are murder, they are crimes against humanity.

The AG has worked with us to arrange briefings throughout the last—well, actually, literally within hours of the terrible matters on September 11. I think we started working together in a way that we can come together with real enforcement tools.

I think it was a week ago when Senator Hatch and Senator Specter and I and the House and Senate Republican and Democratic leaders met with the Attorney General to figure out how best to do this. We arranged meetings about the proposals. I think Dan Bry-

ant probably has a telephone glued to his ear with the calls he has been getting as we tried to work on a consensus package.

We had meetings throughout the week. We continued into the weekend. We have made some progress; I think that we can make more. I think that we can help law enforcement, I think we can help our intelligence community, and we can do it by at the same time helping ourselves by protecting our constitutional freedoms.

We cannot allow terrorism to prevail by curtailing our constitutional democracy or our freedoms, and I commend the Attorney General and the President of the United States who have made that statement time and time again themselves.

We are making progress on a number of things; for example, authorizing the use of roving or multi-point wiretaps in intelligence investigations under FISA, in the same way that we already do for criminal investigations. We have had several years of experience in criminal investigations and we can do it in these others.

Update the money laundering, RICO and wiretap laws to make terrorism offenses predicates for exercising authorities under those laws. I am told by both intelligence people and law enforcement that this would help.

Make certain that we do all we can for the families of the police and the firefighters and other law enforcement and public safety personnel on whom we depend and many of whom have made the ultimate sacrifice.

We have to ensure that our definition of "terrorism" fits the crime.

Mr. Attorney General, I remember at one of the first meetings we had down at the Justice Department, we asked what is the definition of terrorism, and I think we all realized it changes so much from statute to statute. We need one that law enforcement can use.

We have to review the penalty structure for terrorism crimes. Certainly, the penalties for terrorism crimes should equal those for any other very serious crimes, including statute of limitations.

Review immigration authorities and see how they can be improved; increase Federal agents and capabilities along our northern border. Senator Cantwell has raised in meetings we have had the fact that we need far, far better computer technology and identification, not just those that might be on an I.D. card, but those that are indelibly in your eyes or your face, things that cannot be changed. We have to condemn hate crimes and ethnic and racial discrimination in the strongest terms.

So there are a whole lot of things we agree on, and we can work together on that. Senator Hatch and I have talked a great deal about it. I remember after the terrible events in Oklahoma, Senator Specter had a number of hearings, then the full Committee did. We considered a bill quickly within, I think, about 2 months after the incident, but then the House-Senate conference lasted over a year.

I don't want to do that. I want to make sure that we have consensus.

We have all taken the same oath—you have, I have, everybody here has—to uphold and defend the Constitution. We can find ways to do it. A trial by fire can burn us, it can coarsen us, or it can

make us stronger. If we hold to our ideals and values, it will strengthen us here.

We have a United States behind us, united as I have not seen it united in my lifetime, and we will continue to work. Senator Hatch and I have been in constant contact. Incidentally, I want to thank Senator Hatch and his staff for working so closely with us, and for Senator Hatch coming in on Saturday, as my chief counsel said, cracking the whip over all of us.

I will yield to the Senator.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

We meet today to do the people's business, at a time of great national loss and singleness of purpose. This morning, this Committee and the American people will have the opportunity to hear directly from the Attorney General of the United States regarding the status of the investigations underway regarding the terrorist attacks of September 11. Those hijackings resulting in senseless loss of life and destruction were crimes against humanity.

With the cooperation of the Attorney General over the past two weeks we have been able to arrange briefings from time to time. We have also begun a constructive effort to work together on legislative proposals to improve law enforcement tools in the fight against terrorism. Less than a week ago, on Wednesday, along with Senator Hatch and Senator Specter, I met with the Attorney General and other leaders in the House and Senate to put legislative proposals on the table for us all to consider.

We arranged meetings about these proposals in order to construct a consensus package of legislative proposals last Thursday, which meetings continued on Friday and into the weekend. We have made some progress, and I have confidence that working together we can make many improvements in the law and maintain a proper balance between the desires of law enforcement and the need to maintain fidelity to our constitutional rights and way of life. We cannot allow terrorism to prevail by curtailing our constitutional democracy or constricting our freedoms.

We are making progress with respect to a number of areas of law:

- Authorizing use of "roving" or "multi-point" wiretaps in intelligence investigations [under FISA], as we already do for criminal investigations;
- Updating the money laundering, RICO and wiretap laws, to make terrorism offenses predicates for exercising the authorities under those laws;
- Making certain that we are doing all we can for the families of the police, firefighters and other law enforcement and public safety personnel on whom we depend and who have sacrificed so much;
- Ensuring that our definition of "terrorism" fits the crime;
- Reviewing the penalty structure for terrorism crimes;
- Reviewing immigration authorities and seeing how they can be improved;
- Increasing federal agents and capabilities along our Northern Border;
- Authorizing expedited hiring of needed translators at the FBI;
- Condemning hate crimes and ethnic and religious discrimination in the strongest terms.

There are scores of items in agreement that we hope to consider very soon that can help. I have sought to avoid setting unrealistic or artificial deadlines for our efforts. After the meeting last Wednesday, the Attorney General emerged and endorsed the time frame of "as soon as possible" and we have all been working together and coming together to do that. We have shown the ability to act quickly and together in the last several days, most recently with the transportation and victims assistance package enacted on Friday. Working together Democrats and Republicans from the Senate and the House have acted responsibly, expeditiously and together.

After the killing of 168 in the destruction of the federal building in Oklahoma City in 1995, this Committee held a series of hearings beginning with that chaired by Senator Specter two weeks after the incident and proceeding with additional full Committee and subcommittee hearings over the ensuing weeks. The Senate considered a bill quickly, within two months of the incident, but the House-Senate conference on that measure extended over the next year. In the wake of the violence at Columbine High School and the rash of school violence a few years ago, the

House-Senate conference never reconciled the conflicting measures and Congress never completed its work on that legislation. To avoid extended proceedings or the risk that reconciliation never occurs, I intend to reach out to Chairman Sensenbrenner and Representative Conyers to see whether we might not combine our efforts in a coordinated and consolidated way from the outset to resolve to enact the best consensus measure we can design before Congress adjourns this year.

The Attorney General and every Member of this Committee and of the Senate have taken the same oath: to "support and defend the Constitution of the United States." In these difficult days, I caution that we should not lose touch with those constitutional values that make this the strongest, most vibrant democracy the world has even known. That will be a fundamental part of our mandate as we continue to shape the nation's legislative reaction. This challenge to our freedom is going to be answered by the strength of our democracy.

Trial by fire can refine us or it can coarsen us. If we hold to our ideals and values, then it will strengthen us. Americans are united and all the free world, all civilized nations, all caring people join together with us. I trust that we will seek and serve justice and demonstrate to the world not only by our resolve but by our commitment to our constitutional principles that the United States remains strong even in the face of these terrorist atrocities.

Like Pearl Harbor, these horrible events have galvanized our country and united our people with other nations throughout the world. I am confident we will work together to devise new and more effective means to defeat terrorists. This time we need to be smarter. We have to be vigilant to constitutional principles, not vigilantes. We need to focus our response on those responsible for the wrongdoing and to shun stereotyping and guilt by association.

The scope and sophistication of the recent terrorist attacks on American soil call for all the ingenuity, energy, and determination we possess. The actions that we will have to consider may include a combination of military, law enforcement, intelligence, diplomatic and security measures. Developing a comprehensive response may take a little time, but needs to be done right. The President sounded the chord in his address to the Joint Session of Congress and the American people last week. I trust that as we go forward all United States Senators will work together in this effort.

Building on the suggestions of many Members of this Committee and working with Senator Hatch and representatives of the Administration, we have been able over the course of the last week to assemble an impressive list of items on which we have agreement. I thank all Members from both sides of the aisle who have worked with us through the days and evenings and weekends to make significant progress. We are working to be in position without the passage of much time to pass significant legislation containing those consensus items. To the extent other complex proposals are in disagreement, we can continue working on them in the weeks and months ahead. Even if Congress were to adjourn next month, we can hold hearings and continue our work together during the recess.

I have tried to be mindful of the demands on the time of the Attorney General and FBI Director. I have tried not to distract them from their important responsibilities in the investigation and in the immediate aftermath of September 11. We all appreciate the Attorney General making time to be with the Committee this morning.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman.

A little over a week ago, thousands of our fellow citizens were murdered. Last Thursday, our President, with the undivided support of this Congress and the American people, announced a war on terrorism. As the President made clear in his address, we did not seek this war. This war was thrust upon us, thrust upon us by an unprovoked attack upon our civilization and upon our civilian population in the very midst of one of our greatest cities.

Each of us has in different ways had our lives touched by the awful events of September 11. Each of us has in the days since the attack been shocked and appalled by the terrible images of destruc-

tion that have reached us by television, by newspaper, and in many cases by our own eyes.

A scant three weeks ago, we could not have contemplated that today, September 25, 2001, we would be at war. It is true that for years some of us in this Congress and around this country have warned that there were powerful, well-financed individuals located throughout the world who were dedicated to the destruction of our way of life. But few of us could have predicted the horrific methods that these men would employ in an effort to destroy us, destroy our liberties, and destroy our democratic institutions. And they have not succeeded, even though they have caused this destruction.

On September 11, all that changed. In the last few days, we have all come to acknowledge that we live in a different and more dangerous world than the world we perceived when we woke up on the morning of September 11, a different world not only because thousands of our countrymen are dead as a result of the September 11 attacks, a different world not only because many of our neighbors now hesitate to get on an airplane or ride in an elevator or engage in any one of a number of activities that we used to take for granted before the attacks, but a different world also because we must acknowledge that there remains an ongoing and serious threat to our way of life and, in fact, to our health and well-being as a society.

As has been reported in the national media, the investigation into the September 11th attacks has revealed that there are terrorist cells that continue to operate actively among us. It is a chilling thought, but it is true.

The way to which we have collectively committed is a war unlike any war in the history of this country. It is different because a substantial part of the war must be fought on our own soil. This is not a circumstance of our own choosing.

The United States Attorney General will be the individual principally responsible for leading us in that part of the fight that will be conducted on American soil. The Department of Justice and its investigatory components, including the FBI, the INS and the Border Patrol, will continue to have the principal responsibility for identifying and eradicating terrorist activity within our National borders.

The Attorney General has communicated to us, and in no uncertain terms has told us that he does not currently have the adequate weapons to fight this war. He appears before us today.

General Ashcroft, I want to personally thank you for your leadership in this matter and the way you have grabbed the ball here, and for appearing here today and for what I consider to be, and I think most everybody else who has watched it, tireless efforts in managing this investigation over the last couple of weeks.

Mr. Chairman, I want to thank and commend you for this prompt hearing and for proceeding in a bipartisan manner. This is not a partisan issue and it will not be. Some of us may disagree at the end of the day, and I will respect each of my colleagues' ultimate views.

I should also note that the bulk of these proposals have been requested by the Department of Justice for years, under both Repub-

lican and Democrat administrations. Unfortunately, they have languished in Congress for one reason or another.

I have reviewed the Attorney General's proposal and I can say without reservation that the administration's requested authorities reflect a measured and cautious response to the threats that we face. We have been carefully examining this and other proposed reforms. I applaud the Attorney General for moving responsibly in this area and taking care to ensure that the requested reforms as promised a week ago by himself and the President's counsel, Judge Gonzales, fit well within the bounds of the Constitution and do not compromise the basic liberties that all of us citizens of this great Nation have come to cherish.

We must not repeal or impinge upon our cherished constitutional liberties because to do so would bring us closer to the joyless totalitarian society espoused by our enemies. The Attorney General's proposal properly takes these concerns into account, and at the same time does what people around America have been calling upon Congress to do; that is, to give our law enforcement community the tools they need to keep us safe in our homes and in our places of business.

If we do not prevent terrorists from taking away our liberties, we will not have any liberties and we will not have the freedoms that we have all taken for granted.

Mr. Chairman, there have been few, if any, times in our Nation's great history where an event has brought home to many of our citizens so quickly and in such a graphic fashion a sense of our own mortality and a sense of our vulnerability to unexpected attack.

I believe we all took some comfort last week when the President promised us that our law enforcement institutions would have the tools necessary to protect us from the danger that we are just beginning to perceive. So I look forward to working with all of our colleagues to ensure that that happens.

I want to thank the Attorney General for being here. I am very grateful that the leading members of the Justice Department are accompanying him here, and we appreciate all the efforts you have made so far.

[The prepared statement of Senator Hatch follows:]

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Mr. Chairman, last Thursday, our President, with the undivided support of this Congress and the American People, announced a war on terrorism.

As the President made clear in his address, we did not seek this war. This war was thrust upon us—thrust upon us by an unprovoked attack upon our civilian population in the very midst of our greatest cities. Each of us has, in different ways, had our lives touched by the awful events of September 11th. Each of us has, in the days since the attack, been shocked and appalled by the terrible images of destruction that have reached us, by television, by newspaper—and in many cases by our own eyes—from the sites of the attacks at the World Trade Center and the Pentagon. Paradoxically, each of us has also been uplifted by the stories of heroism and self-sacrifice that have emerged from around the country in the wake of these terrible events.

A scant three weeks ago, we could not have contemplated that today, September 25th, 2001, we would be at war. It is true that, for years, some of us in this Congress, and around the country, have warned that there were powerful, well-financed individuals located throughout the world who were dedicated to the destruction of our way of life. But there were few of us who comprehended the true depths of the hatred directed at us by these evil men. Few of us could predict the horrific methods

that these men would employ in an effort to destroy us, destroy our liberties and destroy our democratic institutions.

On September 11th, all that changed.

In the last few days, we have all come to acknowledge that we live in a different and more dangerous world than the world we perceived when we woke up on the morning of September 11th.

A different world—not only because thousands of our country-men are dead as a result of the September 11th attacks.

A different world—not only because many of our neighbors now hesitate to get on an airplane, or ride in an elevator, or engage in any one of a number of activities that we used to take for granted before the attacks.

But a different world, also, because we must acknowledge that there remains an ongoing and serious threat to our way of life and, in fact, to our health and well-being as a society.

As has been reported in the national media, the investigation into the September 11th attacks has revealed that there are terrorist cells that continue to operate actively among us. It is a chilling thought, but it is true.

The war to which we have collectively committed is a war unlike any war in the history of this country. It is different because a substantial part of this war must be fought on our own soil. This is not a circumstance of our choosing. The enemy has brought the war to us. But we must not flinch from acknowledging the fact that, because this is a different kind of war, it is a war that will require different kinds of tools, and different kinds of tactics.

The United States Attorney General will be the individual principally responsible for leading us in that part of the fight that will be conducted on American soil. The Department of Justice, and its investigatory components including the FBI, the INS, and the Border Patrol, will continue to have the principal responsibility for identifying and eradicating terrorist activity within our national borders.

The Attorney General has communicated to us, and in no uncertain terms, has told us that he does not currently have the adequate weapons to fight this war. He appears before us today—and General Ashcroft I want to personally thank you for appearing here today, and for your tireless efforts in managing this investigation over the last couple of weeks. The Attorney General will again request today that he be given the basic weapons, that many of us have supported over the years, that he requires to wage effectively this vital war against terrorism. I urge my colleagues to heed his words.

Mr. Chairman, I want to thank and commend you for this prompt hearing and for proceeding in a bipartisan manner. You and your staff have worked diligently and in good faith throughout the past week, and indeed over the years on these matters. This is not a partisan issue and it will not be. Some of us may disagree at the end of the day and I will respect each of my colleague's views. That is each of our principled beliefs and it is based on our views on the proper balance between the role of law enforcement and our civil liberties. And I should also note that the bulk of these proposals have been requested by the Department of Justice for years—under both Republican and Democratic Administrations. Unfortunately, they have languished in Congress, for one reason or another.

Back to the proposal before us—I have reviewed the Attorney General's proposal, and I can say without reservation, that the Administration's requested authorities reflects a measured and cautious response to the events of the last couple of weeks. We have been carefully examining this and other proposed reforms. I applaud the Attorney General for moving responsibly in this area, and taking care to ensure that the requested reforms—as promised a week ago—fit well within the bounds of the Constitution and do not compromise the basic liberties that all of us as citizens of this great nation cherish.

As the Attorney General has recognized, we must not change our way of life, because to do so would be to signal our defeat. That is exactly what our enemy seeks to bring about.

We must not repeal or impinge upon our cherished constitutional liberties, because to do would only bring us closer to the joyless totalitarian society espoused by our enemy.

The Attorney General's proposal properly takes these concerns into account and, at the same time, does what people around America have been calling upon Congress to do—that is, to give our law enforcement community the tools they need to keep us safe in our homes and in our places of business.

If we do not prevent terrorists from taking away our liberties, we will have no freedom.

I would like to briefly comment on the general thrust of the more familiar proposals in the Administrations legislation—namely, electronic surveillance.

Electronic surveillance, conducted under the supervision of a federal judge, is one of the most powerful tools at the disposal of our law enforcement community. It is simply unfortunate that the laws currently on the books which govern such surveillance were enacted before the fax machine came into common usage, and well before the advent of cellular telephones, e-mail, and instant messaging. All of these modern modes of communication we now know were principal tools used by the terrorists to coordinate their deadly attacks.

The Department of Justice has asked us for years to update these laws to reflect the new technologies, but there has always been a reason to go slow, to seek more information, to order further studies. We simply cannot afford to wait anymore!

I would like to dispel a myth that the reforms somehow require an abridgment of the Constitutional freedoms enjoyed by law-abiding American citizens. Many in the media have portrayed this issue as a choice between individual liberties on the one hand, and on the other hand, enhanced powers for our law enforcement institutions. This is a false dichotomy. The reforms requested by the Attorney General are primarily directed at allowing law enforcement agents to work smarter and more efficiently—in no case do they, as I have reviewed them, curtail the precious civil liberties protected by our Constitution.

Mr. Chairman, there have been few, if any, times in our nation's great history where an event has brought home to so many of our citizens, so quickly, and in such a graphic fashion, a sense of our own mortality, and a sense of our vulnerability to unexpected attack. I believe we all took some comfort last week, when the President promised us that our law enforcement institutions would have the tools necessary to protect us from the danger that we are just beginning to perceive.

I look forward to working with our colleagues to ensure that happens.

Chairman LEAHY. Thank you, Senator Hatch.

General we are, first and foremost, United States Senators and we represent today a United States, more united, as I said, than I have ever seen in my lifetime.

General we appreciate all you have done. I thank you both privately and publicly for what you have done. The floor is yours. Please, if you can, summarize your statement to allow for as many questions as possible.

STATEMENT OF HON. JOHN ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES

General ASHCROFT. Chairman Leahy, thank you, and Senator Hatch, thank you.

I must express my deep appreciation for the fact that we have been collaborating on the way to do two important tasks from the moments after this tragic, criminal act of war was perpetrated against the United States. You have been to the Justice Department and I have been to the Hill, and we have been back and forth and we have seen each other night and day. Frankly, Chairman Leahy and Senator Hatch, I want to thank you for that level of collaboration. It is very important.

In his address to Congress and to the Nation and to the world last Thursday, President Bush declared war on terrorism. As Attorney General, it is my duty to respond to this call to action by ensuring the capacity of the United States law enforcement community to perform two related, critical tasks. The first task is to prevent more terrorism; the second is to bring terrorists to justice.

The American people do not have the luxury of unlimited time in erecting the necessary defenses to future or further terrorist attacks. The danger that has darkened the United States of America and the civilized world on September 11 did not pass with the atrocities committed that day. Terrorism is a clear and present danger to Americans today.

Intelligence information available to the FBI indicates a potential for additional terrorist incidents, and I testified at the House Judiciary Committee yesterday regarding the possibility of attacks using crop-dusting aircraft.

Today, I can report to you that our investigation has uncovered several individuals, including individuals who may have links to the hijackers, who fraudulently have obtained or attempted to obtain hazardous material transportation licenses. Given the current threat environment, the FBI has advised all law enforcement agencies to remain alert to these threats.

I urge Americans to notify immediately the FBI of any suspicious circumstances that may come to your attention regarding hazardous materials, crop-dusting aircraft, or any possible terrorist threat. The FBI website: www.ifccfbi.gov. www.ifccfbi.gov. And we do have a toll-free incoming line for individuals. That is 866-483-5137.

The new terrorist threat to America is on our soil, and that makes it a turning point in history. It is a new challenge to law enforcement. Our fight against terrorism is not merely or primarily a criminal justice endeavor. It has to be a defensive and prevention endeavor. We cannot wait for terrorists to strike to begin investigations. The death tolls are too high, the consequences are too great. We must prevent first, prosecute second.

I can assure the Committee and the American people we are conducting this effort with a total commitment to protect the rights, the constitutional rights, and the privacy of all Americans. We will respect, we will safeguard the constitutional protections which we hold dear.

In the past, when American law enforcement confronted challenges to our safety and security from espionage, from drug trafficking, from organized crime, this Congress and law enforcers met those challenges in ways that preserved our fundamental freedoms and our civil liberties.

And today we seek to meet the challenge of terrorism with the same meticulous, careful regard for the constitutional rights of Americans and respect for all human beings. Just as American rights and freedoms have been preserved throughout previous law enforcement campaigns, they must be preserved throughout this war on terrorism.

The Justice Department will not waiver in our defense of the Constitution, nor will we relent in our defense of civil rights.

As the members of this Committee understand, the deficiencies in our current laws on terrorism reflect two facts:

First, our laws fail to make defeating terrorism a national priority. Indeed, we have tougher laws against organized crime and drug trafficking than we do against terrorism.

Second, technology has dramatically outpaced our statutes. As the Chairman mentioned, law enforcement tools created decades ago were crafted for rotary telephones, not e-mail or the Internet or mobile communications and voice mail.

Every day that passes—every day that passes—with outdated statutes and the old rules of engagement is a day that terrorists have a competitive advantage. Until Congress makes these changes, we are fighting an unnecessarily uphill battle. Members

of the committee, I regret to inform you that we are today sending our troops into the modern field of battle with antique weapons. But that need not be our condition long.

The anti-terrorism proposals that have been submitted by the administration—and, very frankly, informed by and shaped by collaboration with members of this Committee and other Members of the Congress—represent careful, balanced, and in many cases long overdue improvements to our capacity to combat terrorism. It is not a wish list. It is a set of essential proposals, focusing on five broad objectives, which I will briefly summarize.

Number one, law enforcement needs a strengthened and streamlined ability for our intelligence-gathering agencies to gather information necessary to disrupt, weaken, and eliminate the infrastructure of terrorist organizations. Critically, we need the authority for law enforcement to share vital information with our National security agencies in order to prevent future terrorist attacks.

Terrorist organizations have increasingly used technology to facilitate their criminal acts and hide their communications. Intelligence-gathering laws that were written for the era of land-line telephone communications need changing.

Our proposal creates a more efficient, yet technology-neutral standard for intelligence gathering, ensuring law enforcement's ability to trace the communications of terrorists over cell phones, computer networks, and new technologies in the same way we have been able to trace communications of individuals over the analog technologies of the past.

We do not seek changes in the underlying protections in the law for the privacy of law-abiding citizens. The information captured by the proposed technology-neutral standard would be limited to the kind of information that is now capturable in analog settings, the kind of information you might find in a phone bill. The content of the communications would remain off-limits to monitoring by intelligence authorities, except when current legal standards are met.

Our proposal would allow a Federal court to issue a single order that would apply to all providers in a communications chain, including those outside the region where the court is located. And the Chairman has already discussed this, the need for multi-point. Basically we don't want a court order that is specific to equipment so that we monitor a piece of equipment. We want a court order that is specific to a person so that we monitor the communications of a person.

Second, we must make fighting terrorism a national priority in our criminal justice system. We must make that priority a reflection of our laws.

Our laws treat certain criminals and certain individuals in this society more toughly now than they treat terrorists.

We would, for example, make harboring a terrorist a crime. Currently, for instance, harboring persons engaged in espionage is a specific criminal offense, but not harboring a terrorist.

Third, we seek to enhance the authority of the Immigration and Naturalization Service to detain or remove suspected alien terrorists from within our borders.

The ability of terrorists to move freely across our borders and to operate within the United States is critical to their capacity to in-

flict damage on citizens and facilities in the United States. And I am pleased that the Committee is concerned about the rather porous nature of our borders. Under current law, the existing grounds for removal of aliens for terrorism are limited to direct material support for an individual terrorist. We propose to expand these grounds for removal to include material support for terrorist organizations.

Fourth, law enforcement must be able to follow the money. Just to compress that, we not only need to be able to freeze the assets of terrorists, but we need to be able to seize those assets, just like we have for those individuals involved in drug trafficking.

Finally, we need the ability for the President and the Department of Justice to provide swift emergency relief to the families of the victims of terrorism and to the victims themselves, the surviving victims.

Mr. Chairman, I also want to report to you one other thing on the status of the Department of Justice's activities regarding the civil rights of Americans. Since September the 11th, the Civil Rights Division, working closely with the United States Attorneys across the country and the FBI, has opened over 60 investigations into acts involving force or threats of force committed in retaliation for the events of September the 11th. All of these acts include killings, assaults, the destruction or attempted destruction of businesses, attacks on mosques and worshipers, and death threats.

The Department of Justice is firmly committed to pursuing these misguided wrongdoers vigorously. The Civil Rights Division and FBI officials have met with the leaders of Arab American, Muslim, and Sikh communities, and we have established in the Civil Rights Division an initiative to combat post-terrorism discrimination to ensure that all allegations of violence or discrimination are addressed promptly and effectively.

Let there be no mistake: The Department of Justice will not tolerate acts of violence or discrimination against people in this country based on their race, national origin, or religion.

We have all witnessed this savage attack that would seek to destroy America. The challenge falls on us, in the name of freedom, those of us who cherish freedom, to ensure our Nation's capacity to defend ourselves. Today I call upon this Committee and the Congress to strengthen our ability to fight this evil wherever it exists and to ensure that the line between the civil and the savage is so brightly drawn that it will not be crossed as it was on September the 11th.

Thank you.

[The prepared statement of General Ashcroft follows.]

STATEMENT OF HON. JOHN ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES

Chairman Leahy, Senator Hatch, Senators: thank you for the opportunity to discuss the Administration's proposed changes in the law to give law enforcement the tools we need to fight terrorism.

In his address to Congress and the nation last Thursday, President Bush declared war on terrorism. As Attorney General, it is my duty to respond to this call to action by ensuring the capacity of United States law enforcement to perform two related critical tasks: First, prevent more terrorism, and second, to bring terrorists to justice.

The American people do not have the luxury of unlimited time in erecting the necessary defenses to future terrorist acts. The danger that darkened the United States

of America and the civilized world on September 11 did not pass with the atrocities committed that day. Terrorism is a clear and present danger to Americans today.

Intelligence information available to the FBI indicates a potential for additional terrorist incidents. I testified before the House Judiciary Committee yesterday regarding the possibility of attacks using crop dusting aircraft.

Today I can report to you that our investigation has uncovered several individuals, including individuals who may have links to the hijackers, who fraudulently have obtained, or attempted to obtain, hazardous material transportation licenses.

Given the current threat environment, the FBI has advised all law enforcement agencies to remain alert to this threat.

And, I urge Americans to notify immediately the FBI of any suspicious circumstances that may come to your attention regarding hazardous materials, crop dusting aircraft or any other possible terrorist threat. The FBI website is www.ifccfbi.gov. That's www.ifccfbi.gov. Our toll-free telephone number is 866-483-5137. Again, the toll-free number is 866-483-5137.

This new terrorist threat to Americans on our soil is a turning point in America's history. It is a new challenge for law enforcement. Our fight against terrorism is not merely or primarily a criminal justice endeavor—it is defense of our nation and its citizens. We cannot wait for terrorists to strike to begin investigations and make arrests. The death tolls are too high, the consequences too great. We must prevent first, prosecute second.

I can assure the Committee and the American people we are conducting this effort with a total commitment to protect the rights and privacy of all Americans and the Constitutional protections we hold dear.

In the past, when American law enforcement confronted challenges to our safety and security from espionage, drug trafficking and organized crime, we met those challenges in ways that preserved our fundamental freedoms and civil liberties.

Today we seek to meet the challenge of terrorism with the same careful regard for the Constitutional rights of Americans and respect for all human beings. Just as American rights and freedoms have been preserved throughout previous law enforcement campaigns, they must be preserved throughout this war on terrorism.

This Justice Department will never waiver in our defense of the Constitution nor relent our defense of civil rights.

As the members of this Committee understand, the deficiencies of our current laws on terrorism reflect two facts:

First, our laws fail to make defeating terrorism a national priority. Indeed, we have tougher laws against organized crime and drug trafficking than terrorism.

Second, technology has dramatically outpaced our statutes. Law enforcement tools created decades ago were crafted for rotary telephones—not email, the internet, mobile communications and voice mail.

Every day that passes with outdated statutes and the old rules of engagement is a day that terrorists have a competitive advantage. Until Congress makes these changes, we are fighting an unnecessarily uphill battle. Members of the Committee, I regret to inform you that we are today sending our troops into the modern field of battle with antique weapons.

The anti-terrorism proposals that have been submitted by the Administration represent careful, balanced, and long overdue improvements to our capacity to combat terrorism, it is not a wish list: It is a modest set of essentials, focusing on five broad objectives, which I will briefly summarize.

First, law enforcement needs a strengthened and streamlined ability for our intelligence gathering agencies to gather the information necessary to disrupt, weaken and eliminate the infrastructure of terrorist organizations. Critically, we also need the authority for law enforcement to share vital information with our national security agencies in order to prevent future terrorist attacks.

Terrorist organizations have increasingly used technology to facilitate their criminal acts and hide their communications from law enforcement. Intelligence gathering laws that were written for the era of land-line telephone communications are ill-adapted for use in communications over multiple cell phones and computer networks.

Our proposal creates a more efficient, technology-neutral standard for intelligence gathering, ensuring law enforcement's ability to trace the communications of terrorists over cell-phones, computer networks and new technologies that may be developed in the coming years.

These changes would streamline intelligence gathering procedures only. We do not seek changes in the underlying protections in the law for the privacy of law-abiding citizens. The information captured by the proposed technology-neutral standard would be limited to the kind of information you might find in a phone bill. The con-

tent of these communications would remain off-limits to monitoring by intelligence authorities, except for under current legal standards.

Our proposal would allow a federal court to issue a single order that would apply to all providers in a communications chain, including those outside the region where the court is located. We need speed in identifying and tracking down terrorists. Time is of the essence. The ability of law enforcement to trace communications into different jurisdictions without obtaining an additional court order can be the difference between life and death for American citizens.

Second, we must make fighting terrorism a national priority in our criminal justice system.

Our current laws make it easier to prosecute members of organized crime than to crack down on terrorists who can kill thousands of Americans in a single day. The same is true of drug traffickers and individuals involved in espionage—our laws treat these criminals and those who aid and abet them more severely than terrorists.

We would make harboring a terrorist a crime. Currently, for instance, harboring persons engaged in espionage is a criminal offense, but harboring terrorists is not. Third, we seek to enhance the authority of the Immigration and Naturalization Service to detain or remove suspected alien terrorists from within our borders.

The ability of terrorists to move freely across borders and operate within the United States is critical to their capacity to inflict damage on the citizens and facilities in the United States. Under current law, the existing grounds for removal of aliens for terrorism are limited to direct material support of an individual terrorist. We propose to expand these grounds for removal to include material support to terrorist organizations.

Fourth, law enforcement must be able to “follow the money” in order to identify and neutralize terrorist networks.

We need the capacity for more than a freeze. We must be able to seize. Consistent with the President’s action yesterday, our proposal gives law enforcement the ability to seize their terrorist assets.

Finally, we seek the ability for the President and the Department of Justice to provide swift emergency relief to the victims of terrorism and their families.

Mr. Chairman, I also want to report to you on the status of the DOJ’s activities regarding protecting the civil rights of all Americans. Since September 11, the Civil Rights Division, working closely with the United States Attorneys and the FBI, has opened over 60 investigations into acts involving force or threats of force committed in retaliation for the events of September 11. All of these acts include killings, assaults, the destruction or attempted destruction of businesses, attacks on mosques and worshippers and death threats.

The Department of Justice is firmly committed to pursuing these misguided wrongdoers vigorously. The Civil Rights Division and FBI officials have met with leaders of the Arab American, Muslim and Sikh communities and we have established in the Civil Rights Division an initiative to combat post-terrorism discrimination to ensure that all allegations of violence or discrimination are addressed promptly and effectively.

Let there be no mistakes the Department of Justice will not tolerate acts of violence or discrimination against people in this country based on their race, national origin or religion.

Among the high honors of my life has been the opportunity I have had over the past days and weeks to be in the company of these heroes, these friends of freedom; to meet with and work side-by-side with men and women who have exerted themselves beyond fatigue, who have set aside their own personal agendas and their personal safety to answer our nation’s call. The nation has found new leaders—and new role models—in these brave Americans.

Now it falls to us, in the name of freedom and those who cherish it, to ensure our nation’s capacity to defend ourselves from terrorists. Today I call upon Congress to act to strengthen our ability to fight this evil wherever it exists, and to ensure that the line between the civil and the savage, so brightly drawn on September 11, is never crossed again.

Chairman LEAHY. General, thank you very much, and I will place in the record a statement by Senator Levin, the Chairman of the Permanent Subcommittee on Investigations that has been dealing for 3 years with the problems of international money launderers, along with Senators Grassley, Sarbanes, DeWine, Bill Nelson, Kyl, and Durbin. He has introduced a bill, the Money Laundering Abatement Act, which is another one to look at.

Chairman LEAHY. General, I couldn't help but think, as I heard your statement, as I read your statement, and as you and I have had discussions, that we have an enormous number of areas where you and I agree, and I expect you and the majority of this committee, Republicans and Democrats, agree.

Would you also agree with me that we have made some fairly significant progress in our staffs working together, on some occasions with you coming in and also working with us, to find the areas that unite us? Is that correct?

General ASHCROFT. I am delighted to report that our work with you has been very productive, with Senator Hatch, has been most valuable. We feel that the collaboration has been important, and we are where we are today because of it. And we are grateful for it. It began moments after this tragedy struck, and it has been a working relationship that has been superior to any that I have known.

Well, General, frankly, I have been very, very pleased that you have been there, as I told you privately. I will say publicly what I told you privately as we were walking down the hall the other day of the Justice Department. I am glad you are there leading this effort.

General ASHCROFT. Thank you.

Chairman LEAHY. We know that in the last decade, according to the press, the FBI has tripled spending to stop terrorism, quintupled the number of intelligence gatherers, and has tried to change its bureaucracy to share information about terrorists across the Government. I know that was a key priority of former Director Freeh, who worked very, very hard at it and deserves our thanks for that, and it is of Director Mueller.

Now, the press reports indicate that two of the suspected terrorists from the September 11th attack were on the FBI watch list. Does the FBI or the Department of Justice normally give these watch lists to the FAA, the Federal Aviation Administration?

General ASHCROFT. Well, the watch list has basically been a list that is provided to the Immigration and Naturalization Service for monitoring people coming in and out of the country.

When the FBI received these names, it was determined that the individuals had already gotten into the country, so that these individuals were sought, having previously entered the country before the watch listing of the names.

Let me inquire of the experts here as to whether or not this list goes to the FAA or whether it just goes to the immigration officials.
[Pause.]

General ASHCROFT. It has not been the practice in the past for the FAA to be the recipient of the watch list.

Chairman LEAHY. General, could I suggest that in a whole new and changed world—and I have heard Ms. Garvey talk about this, too—that there be an effort first in the administration—this is something we won't do legislatively, but the administration find out when such lists should be given to the FAA and what steps the FAA does to give them to airlines.

General ASHCROFT. Air carriers.

Chairman LEAHY. And then what steps the airlines follow, which goes to what Senator Cantwell and others have said about having

the equipment, the computer banks and so on to do this, what they do to check on it. We are in a whole new world where a terrorist in one part of the world can be in downtown Chicago a day later from anywhere else in the world. We have to know who is doing that.

I have circulated a proposal with a number of steps that I think would be practical—and I think of this especially as Prime Minister Chretien of Canada is in town—to increase the number of Border Patrol agents on the Northern border, increase the number of judges involved in reviewing foreign intelligence surveillance reports from the seven that we now have, perhaps doubling that and keeping a number of those here in the area closer to the headquarters of the Department that would be making the request, to expedite the hiring of translators at the FBI and realize that if you have somebody who speaks a language very well and they are in a wheelchair or blind or whatever else, if they can do the translation, we should be very broad in what is required to hire them because we want their translating skills.

Would you agree that these are all important things that we could do?

General ASHCROFT. I think those are very important considerations. We have, you know, taken for granted our Northern border with the excellent friends we have in Canada. But, for example, we have 9,000 people basically supervising border enforcement on our Southern border and fewer than 500 people supervising enforcement along the Northern border.

I have conferred with Commissioner Zigler of the INS about this, and we are working on plans to help provide greater security for our Northern border, which has become a transit point for several individuals involved in terrorism.

Chairman LEAHY. As one who lives on the Northern border—and I see several others who do are here—obviously we are concerned. Canada is our largest trading partner, and it is a place we are very friendly with. We want to keep that up. But we also don't want this to be an area of vulnerability. I think we can do both. We can keep traffic moving quickly through it, but with the proper equipment, people, personnel, computers and so on, we can do a far better job.

My time is up, and I will keep a tight connection on time, so I will yield to Senator Hatch. I would also note that Senator Biden is going to have to leave for a funeral, and Senator Biden has been one who has worked as hard on these issues as anybody else in this committee.

Senator Hatch?

Senator HATCH. I would be happy to yield.

Senator BIDEN. Just for 10 seconds. I want to explain to the Attorney General that I appreciated his call. I am looking forward to working with you on this legislation. But a young man who was killed in the Pentagon bombing, a young 21-year-old Navy guy, I am going up to his funeral in Newark, Delaware. So I am going to have to leave now, but with your permission, Mr. Chairman, I would like to be able to submit my questions in writing.

Chairman LEAHY. Thank you. And when General Ashcroft and I spoke this morning, he said that all of the questions submitted for the record, they will do everything possible to get them back today,

which I appreciate. Obviously, something that is that complex, we are not going to hold you to that, but it will help us work.

I want to yield to Senator Hatch. I am told that the lights are not working. I would ask staff of each Senator to hand them a note—and they will also hand me a note—when 5 minutes is up. And please help us with this.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

General Ashcroft, I have looked over the suggestions that you have made, the statutory language you have suggested, and I think it is a measured, targeted response to what we are facing here, and it is something that is long overdue and something that, like I say, both Democrat and Republican administrations have been requesting for so many years.

Now, there are some misapprehensions and there are some misunderstandings that I think occasionally show up in some of the media. So let me just say, for instance, I know that some of my constituents have expressed concerns that the legislative proposal grants the FBI broad new powers to engage in unsupervised wiretapping of U.S. citizens. Now, in order to clear away some misperceptions regarding this bill, I would like to ask you or your Deputy, Mr. Thompson, or Mr. Chertoff, the head of the Criminal Division, or all three of you, do any of the provisions you have requested allow law enforcement agencies to engage in electronic surveillance without getting approval from a Federal judge?

General ASHCROFT. No, they don't. What we have tried to do is to bring into parity some of the communications and records of communications, not the content of communications, that are on the Internet now that used to be done over the telephone. So we have tried to develop a technology-neutral framework, and with FISA, Foreign Intelligence Surveillance Act, we have sought to get the multi-point reforms made in terms of coverage that this Committee provided last year for telephone communications, and in the non-FISA area.

Senator HATCH. And to follow up, General Ashcroft, is it ever possible for law enforcement agents to engage in any sort of electronic surveillance without making a certification to a judge that the information is relevant to a criminal investigation or to an investigation involved in foreign counterintelligence?

General ASHCROFT. The standard required for FISA applications and for normal criminal settings should be relevant to the investigation. That is the criminal standard that we now have, and that is the standard which we think is appropriate. That would not be a change in the way in which constitutional rights of individuals are regarded by our courts and by the country.

Senator HATCH. And in each case, you are going to have to get a judge's approval?

General ASHCROFT. You have to allege to the judge that the information sought and that the conduct is relevant to an appropriate inquiry, and the judge has to issue then an order.

Senator HATCH. General Ashcroft, I would like to just take a few minutes to talk about little devices called pen registers. As you know, pen registers may be employed by the FBI after obtaining a court order to determine what telephone numbers are being

dialed from a particular telephone. And I know that these devices are critical investigatory tools.

Correct me if I am wrong, but my review of the Constitution and of the case law shows that the Supreme Court has held in *Smith v. Maryland* that the information obtained by pen register devices is not information that is subject to any constitutional protection. Is that correct?

General ASHCROFT. Well, I believe that to be correct, and we do not seek to really change the substantive law here. We need to extend the pen registry type of information to the new technology, but this is the kind of information that has been available in law enforcement for quite some time.

Senator HATCH. Well, unlike the content of your telephone conversation, once a call is connected, the numbers you dial into your telephone are not private. You are sharing them with the telephone company in order to allow the telephone company to make the connection and, of course, to bill you for the call. Because you have no reasonable expectation that such numbers will be kept private, as I understand it, they are not protected by the Constitution. Now, the Smith holding was cited with approval by the Supreme Court just earlier this year, as I understand it.

Now, as I understand it, the thrust of your proposed reform regarding pen registers would make clear what the Federal courts have already ruled, that the Federal judges may grant pen register authority to the FBI to cover not just telephones but other more modern modes of communication, such as e-mail or instant messaging, or get just routing information.

General ASHCROFT. That is true. Let me just clarify this. Pen registers or trap and trace information, which doesn't include the content of communication—it includes the person making the communication and—it doesn't even include the person. It includes the number from which a call was made and the number to which it was made. These have a standard that you have to assert the relevance to an investigation before the court orders that procedure.

When you want the content of calls, then you have to be able to go to the court and convince the court that there is probable cause, and that is a much higher standard. So when you are looking just for this information, which you have indicated properly the courts have indicated is not really—it is information shared with the phone company, not private information, not in the exclusive control of the subject. Those things are appropriately—the standard of relevance covers them, and to extend it to the new technologies is not a giant step or leap.

Content calls will always require probable cause, content of calls, and the content of other communications should.

Senator HATCH. Thank you, Mr. Attorney General. My time is up.

Chairman LEAHY. Senator Kennedy?

Senator KENNEDY. Thank you very much.

General welcome.

General ASHCROFT. Thank you, Senator.

Senator KENNEDY. And I think all of us recognize the new nature of the threat, and we want to be able to get the authority to law enforcement officials to hunt down the terrorists and those that

support the terrorists. And we want to work closely with you, and we thank our Chairman and Ranking Member for the work that they have done and for the work you have done in exchange.

General ASHCROFT. Thank you.

Senator KENNEDY. I am concerned about the immigration provisions, and I will come back to that, and also on the questions of the wiretap. As you remember from the Foreign Intelligence Surveillance Act, there is quite a difference in the proposal now from what it has been, from the primary purpose being foreign to just the ability to have a purpose, and it also does, as I understand it, permit the exchange of information in terms of the criminal investigation. So there may be just issues of clarification, but I think that is an area which I know our members will have.

I want to also thank you for the pursuit of the Justice Department, the President's strong support, in terms of these hate crimes. This is an issue which our Committee has wrestled with over some period of time. We have had some very serious situations in my own State in the last few days, and we want to make sure you have all the totals. As you know, that is something that we can get into at another time.

But in the time that I have, I would like to just focus first of all on the issues on the mandatory detention and judicial review. Obviously, anyone who is suspected of engaging in terrorist activity should be vigorously investigated and prosecuted when adequate evidence has been obtained. Many of us, however, have serious concerns about the administration's proposal to give the Government broad powers to detain a person indefinitely on the mere suspicion that the person may engage in terrorist activity without any realistic review of the decision.

So can you explain what your proposal's evidentiary requirements are for certifying that the Attorney General has reason to believe that an alien may be involved in terrorist activity and, therefore, be subject to mandatory indefinite detention?

General ASHCROFT. I thank the Senator for this question because this is an area of importance.

When a person is being the subject of adjudication for deportation, for being deported on grounds that are other than terrorism grounds, frequently that individual is not detained. The provision that we have in this proposal is that if the Attorney General determines that the individual meets a standard of being a threat to national security, et cetera, when that person during the pendency of the adjudication of being deported on other grounds, that person can be held in custody, and that is the nature of this provision.

Very frequently, individuals who may be associated with or parts of activities which could be terrorist-oriented are individuals whose status is not appropriate. They are subject to deportation for other reasons.

If we are in the process of deporting an individual for other reasons, during the pendency of those proceedings this provision provides that that individual, if determined to be the kind of threat that we have described in the bill, could be held in custody while that proceeding was being concluded. That is the extent of the so-called indefinite ability of the Attorney General to hold individuals in immigration proceedings.

Senator KENNEDY. Well, I thought, General, you have that power at the present time, I understand, to hold an individual. I understand you have got the power that you have just described under current law at the present time. But I will be glad—what I am interested in is others that you may want to be able to hold, that could be permanent resident aliens or could be—that are not subject to the deportation kinds of hearings. You have new authority and new powers, and that is the principal one that I am interested in pursuing.

The standard which you will use on this, I was interested in hearing from you what you thought the standard, the evidentiary standard would be.

Let me just move on, if there is something in addition you would like to add.

General ASHCROFT. I believe we are talking about individuals who are the subject of an adjudication regarding their being deported—

Senator KENNEDY. They are the only ones you are going to extend this power to—

General ASHCROFT. Now, they may be the subject of it because their visa has expired. I am not talking about necessarily having alleged in the proceeding that the subject of the proceeding is terrorism, but if they are the subject of a deportation proceeding, then upon the determination by the Attorney General. I don't mean to take additional time. I know you want to move on.

Senator KENNEDY. All right. I would welcome the opportunity to clarify that with you.

General ASHCROFT. Certainly. We will be very happy to confer on it.

Senator KENNEDY. Let me ask on this, what kind of assurance can you give us that that determination will be made by someone at a high level in the Justice Department, you know, like yourself or your Deputy? Can you give us any assurance that that kind of judgment in terms of the indefinite delay will be made by someone—frequently under the existing law, it can be made by a relatively low level, and then the cases which have been tried in the past, those cases have generally been overturned.

I would be glad to talk about it. I don't want to fly-speck you on this kind of thing about what particular part. But if we can have assurance that it is going to be made at a level in the Department from someone that has—

General ASHCROFT. I would be very happy to work with you on that.

Senator KENNEDY. Okay.

General ASHCROFT. I am not interested in this becoming a matter of course determination as a means of holding people who otherwise should not be held.

Senator KENNEDY. Just on the question of review, on the habeas corpus review, on these kinds of cases, could you describe a little bit what kind of review they will be subject to? As I understand, under the administration's, it will be just the question, it will be habeas corpus review, but it will only be with regards to the individual, whether we have the right individual or not, a review on the reason that they are being held. That is the difference. Again,

I will bring that to your attention. These are complicated and difficult ones, but if we could——

General ASHCROFT. I would be very happy to work with you on that. Habeas can be a very broad remedy, and you can allege virtually anything in a petition. You could allege that the Attorney General either relied on false documents or bad information or made an arbitrary rather than a discretionary decision. But we should work—if that is a problem, I would be very happy to collaborate to resolve that issue.

Senator KENNEDY. My time is up. I thank the Chair.

Chairman LEAHY. Thank you.

We have been joined by Senator Thurmond, the most senior member of the committee. Senator Grassley would have gone next. With his courtesy, his usual courtesy, we will go next to Senator Thurmond.

**STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR
FROM THE STATE OF SOUTH CAROLINA**

Senator THURMOND. Mr. Chairman, today the security of our Nation is at risk from an enemy unlike any we have faced before. The President is doing an excellent job in responding to the threat. We in the Congress have a duty to assist the President and our Nation at this time of great need. We are providing resources, but we also need to reform our laws to help law enforcement track down terrorists and prevent future attacks.

The Attorney General's proposals are reasonable and entirely consistent with the Constitution. Many of them have been considered for years based on computer crime and other threats. Also, this legislation will allow intelligence and law enforcement communities to share more information which would have helped in advance of the tragedy of September the 11th. These reforms are overdue. This is not a time for endless deliberation and delay. This is a time to act.

Thank you.

General ASHCROFT. I thank the Senator.

Chairman LEAHY. Thank you, Senator Thurmond.

Senator Kohl?

Senator KOHL. Thank you, Mr. Chairman. And, Mr. Attorney General, it is good to see you here today.

The terrorist attacks demonstrated a total breakdown in our intelligence, one that cannot be excused and must never be forgotten. Given the limited time available, I just have a few questions to pose to you.

Mr. Attorney General, shouldn't we be focusing our attention first on improving human intelligence in an attempt to prevent terrorism? A former CIA official was quoted in the Post yesterday as saying that, "Wiretaps do no good if you have no one who can translate or be able to understand what they are hearing."

In addition, published reports indicate that plans for the 1993 World Trade Center bombing were outlined in documents collected in a different case. But because the prosecutors could not translate the documents from Arabic, the information was ignored.

So can you tell us today what the Department is doing to improve its intelligence capabilities immediately?

General ASHCROFT. First of all, Senator, I agree with you that human intelligence is very important, and I believe that from what I can tell the Congress has been responding to that need, and we intend to. The Director of the Federal Bureau of Investigation has indicated the need for us to recruit individuals with backgrounds and awarenesses of the culture that will help us prevent these kinds of events. We have also made an appeal for individuals with the appropriate language skills.

I happen to know that—I have talked to the Director of the Bureau about looking down the road for the next couple decades to anticipate what kind of cultural and language capacities we are going to be needing. It is very apparent that we need additional individuals so that intelligence we get can be digested and translated immediately, but we also ought to be looking to the next decade and the one beyond to make sure that our intelligence operations and our enforcement capacity, which will provide the foundation for our prevention, that those things be in place. You can't wait for a threat and then run out and learn a language that is very tough. And we are beginning to look with the kind of foresight that I think you are suggesting in your question. We are very eager to work together that done and have begun that process already.

Senator KOHL. Mr. Attorney General, you have provided us with a significant list of requests for changes in criminal law. The Department, however, must have a few priorities from among that list. If the average American asked you what three or four or five items in the bill the Justice Department really needed to make a difference in preventing terrorism and bringing terrorists to justice today, what would you tell that person?

General ASHCROFT. Well, there are a couple concepts that I think are understandable to the American people, and that is that we need terrorism to be a priority for law enforcement. And in order to do that, we need for the laws regarding terrorism to have at least as tough teeth and as strong an enforcement and prevention capacity as exists for laws against organized gambling or laws against organized crime or laws relating to drug trafficking. So that is a priority, to bring the laws relating to terrorism up to speed with the rest of the laws.

The constitutionality has already been established in these other arenas, so it is a matter of just bringing these up to date.

The second thing is to make sure that our technology, which is being widely used by the criminal element and terrorists in particular, hasn't outpaced the format for gaining information, so making unavailable today the kind of information that we had a year or two ago when the law and the technology were focused on the same rules.

Those are the two main things that are priorities that I think we need to have understood.

Senator KOHL. All right. Mr. Attorney General, can you say with any confidence that there is anything in the Justice Department's bill that would have prevented these attacks or made them demonstrably less likely to have occurred?

General ASHCROFT. It is impossible to say that had we had every one of these provisions that we would have avoided the attack. We know that without the provisions we did not avoid the attack. We

know that these provisions would strengthen our ability to know and to intercept and to monitor and prevent, to thwart and disrupt. But there is no way for me to guarantee that even with all of these items we would have known about this particular attack.

It is a complex effort. I think much of the planning may have been done overseas, the execution carried out here, and it demonstrates the new world in which we live where there is an inter-relationship between the international and the domestic. For a long time we have said that the CIA has information that deals with things overseas and the FBI has information that deals with things at home. But I think we have learned that there are those things that are happening overseas that are very, very threatening to the way in which we live at home.

So I can't guarantee that any of these things would have prevented it. We know that without these things we did not prevent it. I do know that these are valuable tools and that without them we are fighting a war or a battle that is unnecessarily uphill.

Senator KOHL. Thank you.

Mr. Chairman, my time has expired.

Chairman LEAHY. Thank you, and the lights are working again. Senator Grassley?

Senator GRASSLEY. General Ashcroft, I would like to go back—

General ASHCROFT. If you had called me "Senator," I would have considered it a compliment.

Senator GRASSLEY. Senator Ashcroft, I want to go back to where Senator Hatch left off for just a little further clarification. As I recall, you stated that e-mail routers should be treated the same as the telephone numbers that are captured by a pen register or a trap and trace. The fact is they are not the same.

Doesn't the e-mail router contain some information about what is contained within and then really goes further than what, it seems to me, you want to go? Because you want to know who is communicating, but you don't want to know what the message is.

General ASHCROFT. We are very cognizant of the need for a different standard for the content, any indication of the content of the call. So the only thing we seek to discover based on the trap and trace and the pen registry is the address of the sender and the address of the recipient.

Senator GRASSLEY. Since that information also includes some information about what is the message contained, don't you then go a little bit further than what you anticipate going, or what you—and I am not questioning your veracity. I just want to understand. Do we understand that you might be going further than you intend to go, then, based upon your statement?

General ASHCROFT. Our view is that the subject line would require us to have a Title 3 or the higher-level authority, and we do not want that line as a result of our pen register or trap and trace. We want this to be technology-neutral. We don't think that there should be a competitive advantage to people using the digital circumstance that gives them an impunity that they didn't have in the analog world. But we are not seeking—and I don't believe the legislation—I would be happy to confer on this, and if there are ways that we need to adjust it, we will. We are not asking that we get content or an identification of the possible content or even the

titling of the message. We want to know the instrument from which it was made and the instrument to which it was directed.

Senator GRASSLEY. I want to get at a point on another issue about whether or not there is adequate coordination and sharing of information from FBI investigators with top officials.

There was a September 14th news briefing in which Director Mueller represented that if the FBI had understood that the hijackers had received flight training in this country, they could have possibly averted the tragedy. However, information has now surfaced that the FBI indeed had information from the U.S. Embassy bombing trial, from flight schools who called the FBI, and from interviews that agents conducted at flight schools.

So far, we have highlighted that there is a need for better coordination between Federal agencies, but first it seems to me that the FBI needs to be doing a better job internally of disseminating critical information, namely, key information gathered by investigators isn't being passed on to top officials, who then are in a position of giving an inaccurate statement about facts.

I know that I share the concern that you have that an investigation of this magnitude is receiving adequate oversight and supervision, and in return, that the top officials are hearing everything they need to know about the case. So could you address this and whether there is any remedy that we need to take to the problem?

General ASHCROFT. Well, as you well know, we have thousands of FBI agents, over 10,000 agents, and they all come into various levels of information. And making sure that the information is sent up the chain so that it could be understood as it relates to what another agent, instead of Agent 10,000, Agent 7 also gets something that is similar. That is the big challenge in these things, not to lose information and yet not to be swamped by it.

I can just assure you that we are painfully aware of the need to understand what is important in one section in terms of what might be found in another. We have learned that—knowing what we know now about flight training and about individuals seeking flight training, we act on that information far differently and more aggressively.

When we learned about individuals in the crop-dusting setting, looking at and getting training and having information about dispersing chemical or other agents as a result of—pardon me, through an aerosol way, we sent out a warning all across the country.

And that is the big challenge for us. We will work to do it as well as it can be done, and that is, coordinating what one agent learns in one part of the country with information that is developed in another part of the country to decide whether there is a pattern that suggests that we have a special vulnerability. The costs of not getting that done can be very substantial.

Senator GRASSLEY. Thank you. My time is up.

Chairman LEAHY. Thank you.

Because of the Attorney General's schedule, we are only going to have time for questions by Senator Feinstein and Senator Specter to accommodate his schedule.

Senator Feinstein?

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

Mr. Attorney General, let me say right up front that I think you have done a very fine job.

General ASHCROFT. Thank you.

Senator FEINSTEIN. Let me say that I am one that wants to see you have what you need to do the job that all Americans know needs to be done. Having said that, as you know, there are some controversial parts of some of this, and it occurs to me that a way to go might be to put a sunset on those controversial parts. So let's say they sunset in 5 years, and we then have an opportunity to take a look and see that they weren't misused after that 5-year period.

This really involves some of the technical aspects of it, and in my next question, I am going to ask you specifically about Section 153. Mr. Kris gave very good testimony yesterday before the Intelligence Committee on this particular section, which I think concerned Senator Edwards as well as myself at that hearing.

But let me ask the first question. How would you feel if in some of these, particularly with the wiretaps, we put a 5-year sunset on those sections?

General ASHCROFT. Well, Senator, I thank you for your concern, and I know what you are seeking to do is to balance the system to make sure that we have it done well.

The risk of having these kinds of tools expire at a moment when it would be very difficult for us perhaps to explain publicly why they shouldn't expire and the risks of being caught without these protections are very high. If I thought the risk of terrorism was going to sunset in several years, I would be glad to say we ought to have a sunset provision.

So I don't believe an automatic sunset is the answer here. I do believe that this Committee and other aspects of the U.S. Congress in exercising their responsibility to the public to monitor the ways in which these items are implemented, and if at any time prior to—if after a short period or a long period, adjustment is the business of Government and free people. So I guess I would say that we need to err on the side of having these tools available, but also with the superintending responsibility of Congress to make sure that these are being used in ways that respect the need for security and the civil rights and liberties of American citizens.

Senator FEINSTEIN. If I may, I thank you for that. I would like to ask the same question I asked yesterday of Mr. Kris, really with the intention of really bringing this to your attention, and this is on Section 153, the foreign intelligence information, and that section aims to clarify that the certification of a FISA request is supportable where foreign intelligence gathering is "a purpose of the investigation."

Now, the primary purpose test, as you well know, has often been cited as one of the reasons that FISA meets the constitutional requirements under the Fourth Amendment, and we are concerned that the elimination of the test might place FISA in danger of being struck down by a court.

Now, Mr. Kris testified that the Department does not believe that will be the case, but I would like to ask this question: What would your view be if, instead of adopting the Attorney General's

proposal, FISA was amended to allow for a substantial or significant purpose?

General ASHCROFT. Well, frankly, I think these are very good questions. These are questions over which we have labored. The *Keith* case, as it is known, from 1972 went into these things, and the *Troung* case more recently.

It is important to remember that FISA applies only to foreign governments or the agents of foreign governments. This is not something that is broad in terms of its application. The overlap of criminal and terrorist activities, I think, is the reason we see for having FISA operative as a purpose, being the foreign intelligence surveillance purpose, and criminal activity being susceptible, as well, because a number of the terrorist operations that we encounter support themselves with criminal activity.

If we don't have the capacity of having purposes other than the foreign intelligence purpose, we find that we might have to discontinue in order to prosecute some of these coverages, and given the fact that frequently the terrorist activity is planning more than one activity, so that we would like to be able to continue surveillance for subsequent activities.

I think if I were forced to say if we are going to make a change here, I think we would move toward thinking to say that if "a purpose" isn't satisfactory, say "a significant purpose" reflects a considered judgment that would be the kind of balancing that I think we are all looking to find. If I were having to choose one of your words, I think that is the one I would choose.

Senator FEINSTEIN. Thank you. That is very helpful.

Thank you, Mr. Chairman.

Senator SCHUMER. Mr. Chairman, I know we won't have time today, but will the Attorney General be willing to come back? We have so many other questions.

Chairman LEAHY. So that members can know, anybody can submit any questions they wish today to anybody here, and I welcome our former Senator officer, Jim Ziglar, here, too, in that regard.

Senator Hatch wants to meet with his side, and I with ours, and we will work out whatever seems to be the most appropriate way. Please let the two of us talk and then all of us, the members, can talk about that.

Is that right, Orrin?

Senator HATCH. Yes, that is right, but we do have other people here who can talk to these issues—The Deputy, the head of the Criminal Division.

Chairman LEAHY. I think we want to give a chance for the General—for example, he made a very significant point on the FISA taps just now. I would really like to have it at this level. I want to thank all of his people in his office who have worked very closely with a number of us as we have been going through this.

Senator SPECTER?

Senator SPECTER. Thank you, Mr. Chairman.

Senator SCHUMER. Mr. Chairman, I tend to agree with some of the things in the Attorney General's bill. The trap and trace part is the exact same language that Senator Kyl and I had, different than yours.

But this is such an important issue that I would just urge, with all due respect, that we be able to have the Attorney General himself come back so that we can answer questions before we move this bill. I am sure I speak for all of us who didn't get a chance to ask any that we would come back at a time of his convenience.

Chairman LEAHY. I tend to agree with the senior Senator from New York and that is what we want to work out, if Senator Hatch and I could work together with the Attorney General on doing that.

Now, Senator SPECTER, you get the last word here.

Senator SPECTER. Thank you, Mr. Chairman.

Attorney General Ashcroft, or Senator Ashcroft—last year you were on this side of the dais—you are performing more important work now, so we thank you for what you are doing.

The consensus is we want to give the authority to law enforcement which it needs, consistent with the Constitution. As I have listened to your answers on two points, I have a question as to whether the statutes do what you have thought that they do, and we have to work through the details on this.

With respect to the mandatory detention of suspected terrorists, Section 202, that section gives broader powers than just having mandatory detention of someone thought to be a terrorist who is being held for deportation on some other lines.

Section 202 defines detention of terrorist aliens and authorizes the Attorney General to certify that an alien may be detained who he "has reason to believe may commit further...or facilitate acts described in sections"—a number of sections are listed and they all relate to terrorism.

So on the face of this statute, it appears that the authority to detain on that very generalized standard without any evidentiary base or probable cause would be beyond somebody who is subject to deportation on other grounds.

General ASHCROFT. Senator, we will be happy to work on the language here if it is unclear or if we are mistaken. Our intention is to be able to detain individuals who are the subject of deportation proceedings on other grounds, to detain them as if they were the subject of deportation proceedings on terrorism grounds, which the law provides clearly is a mandatory detention.

Senator SPECTER. Well, I think the law now gives you authority to detain if you are proceeding to deport. But on this phase, it goes well beyond that just on those where you have some rather vague—

General ASHCROFT. Well, this is the concern expressed by Senator Kennedy, and obviously we need to clarify this because we don't want to have something which has an effect which we don't intend.

Senator SPECTER. Let me pick up on Section 153. You testified in response to an earlier question that "content always requires probable cause." But the way 153 would be structured, and under the Foreign Intelligence Surveillance Act, this was a big issue which arose on the Wen Ho Lee investigation, where Attorney General Reno testified about a Foreign Intelligence Surveillance Act warrant. There, when you have a foreign government involved and an individual is working for the foreign government, you don't have

to show probable cause that that individual is engaged in criminal activity.

So you may need further authority and it may withstand a constitutional test. Candidly, I doubt it, but it might. But I think we really have to face up squarely to the point that where you change “primary” to “a,” or even if you change “primary” to “significant,” you are deviating from a statute which has been in existence a long time and subject to a lot of interpretation, so that you will be reaching content without a statement of probable cause. And if that is what you want, we are going to have to scrutinize it very, very closely.

General ASHCROFT. Well, we will be happy to work with you, both to provide the appropriate respect for content and the appropriate respect for the Constitution. Under FISA, the probable cause provision is the probable cause that the individual is an agent of the foreign power.

Senator SPECTER. Well, traditionally, you can reach that through a FISA warrant, but you can’t use the oral content—as you put it, content always requires probable cause—you can’t use that probable cause, then, in a proceeding against a terrorist on a criminal charge.

Attorney General Ashcroft, I see Mr. Thompson giving you some notes. I would be glad to pursue this with him because the red light is on.

General ASHCROFT. Well, I am pleased to have you say that. Let me conclude. For a United States person to be a FISA target, we must show that there is probable cause that he may be involved in criminal activity, and the note says 50 U.S.C. 1801(b)(2). You know I don’t have that clarity—

Senator SPECTER. I know that section very well.

[Laughter.]

General ASHCROFT. You know it well, you know it well, and the reason I have brought these—

Chairman LEAHY. I read that every night before I go to bed.

[Laughter.]

General ASHCROFT. I thank you. May I just say a word to thank the Committee for the seriousness with which it addresses these issues. The concerns are very serious to all of us about constitutionality, and they are about preventing additional terrorist acts and bringing to justice those who perpetrate them. We are eager to continue our work together to achieve the kind of safety and security for this Republic that Americans and our freedom deserve.

Senator SPECTER. If I may ask a very non-technical question, would you think that the problems on hate crimes which you have described would warrant Federal legislation on that subject which has been pending for some time?

General ASHCROFT. Well, this is perhaps the most massive hate crime ever perpetrated, and this is the kind of activity which we not only need to be able to prosecute, but we must be able to prevent.

Chairman LEAHY. General, I should note that when we come back, it will be Senator Feingold and Senator Kyl.

I want to thank you personally for all the time you have spent. I also want to compliment the staffs—yours, the Senators’ staffs,

mine, Senator Hatch's, and others—who have worked virtually around the clock since September 11. As I have told you a number of times, I don't know when you are sleeping because you and I have talked at some awfully weird hours during the past week.

I do want to thank you and I want to thank the President for rallying the country the way you have. We will try to make sure you have the tools, but we want to make sure we have tools that protect all of us for decades to come. I know you and I agree on that. I thank you for being here.

General ASHCROFT. Thank you.

Chairman LEAHY. All statements submitted by Senators will be included in the record.

We stand in recess.

[Whereupon, at 12:22 p.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Statement of Hon. Russ Feingold, a U.S. Senator from the State of Wisconsin

Mr. Chairman, as our nation mourns, we are also struggling to understand what went wrong, how this attack could have been detected or even prevented, and what we can do to prevent future attacks against our nation. It is clear that there is room for improvement. For example, I believe we should move expeditiously to remove the statute of limitations for certain international terrorism crimes and to provide the Immigration and Naturalization Service with greater access to the FBI's National Crime Information Center (NCIC) database to determine whether visa applicants and applicants for admission have criminal history records. There are many commonsense improvements we can make without delay to help this investigation and assist the eventual, and I believe inevitable, prosecution and punishment of the perpetrators of this attack who are still alive.

But I am concerned about some proposals that do not appear to strike the right balance between respecting our civil liberties and ensuring public safety. Our Constitution faces its greatest test at times of crises. This is surely such a test.

For example, the indefinite mandatory detention provisions in the immigration piece of the Administration's proposed bill raise serious due process concerns. The bill also appears to make "guilt by association" a basis for deportation. I am also concerned about provisions that would unnecessarily broaden the government's ability to conduct surveillance without a warrant. Judicial review of law enforcement activity is an important check that helps guarantee that constitutional protections are observed. One provision that is especially troubling would allow private education records to be disclosed to the government without a court order.

As the Chairman of the Constitution Subcommittee of this Committee, I feel a special duty to defend our Constitution against proposals, born of an understandable desire for vengeance and justice, that would undermine the constitutional liberties that make this country what it is. Let us remember that the Constitution was written in 1789 by men who had won the Revolutionary War. They did not live in comfortable and easy times of hypothetical enemies. They wrote a Constitution to protect individual liberties in times of war as well as in times of peace.

There have been periods in our nation's history when civil liberties have taken a back seat to what appeared at the time to be the legitimate exigencies of war. Our national consciousness still bears the stain and the scars: The Alien and Sedition Acts, the suspension of habeas corpus during the Civil War, the internment of Japanese-Americans during World War II and the injustices perpetrated against German-Americans and Italian-Americans, the blacklisting of supposed communist sympathizers during the McCarthy era, and the surveillance of antiwar protesters, including Dr. Martin Luther King, Jr., during the Vietnam War. Let us not allow this piece of our past to become prologue.

We must show those who would have us live in fear that they have failed to achieve their goal. Just as we are resolved to seek justice for the victims of the September 11th attacks, we must resolve to uphold our values. We must not temper our unwavering support for democracy, basic human rights, and the rule of law.

I am not alone in expressing these concerns. Over 150 organizations, 300 law professors and 40 computer scientists have formed a coalition, "In Defense of Freedom," to express their concern about taking steps that would erode our constitutional rights and freedoms. These groups represent a range of views on the political spectrum, including the American Civil Liberties Union, the American Conservative Union, Americans for Tax Reform, and People for the American Way. Mr. Chairman, I ask unanimous consent that a copy of the declaration of In Defense of Freedom and list of supporting organizations and individuals be placed in the record.

The words of the Supreme Court nearly 40 years ago seem apt today. In the case of *Kennedy v. Mendoza-Martinez*, the Court said:

It is fundamental that the great powers of Congress to conduct war and to regulate the Nation's foreign relations are subject to the constitutional requirements of due process. The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action. "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." "If society is disturbed by civil commotion—if the passions of men are aroused and the restraints of law weakened, if not disregarded—these safeguards need, and should receive, the watchful care of those intrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution." [*Kennedy v. Mendoza-Martinez* (quoting *Ex Parte Milligan*)]

Mr. Chairman, I am pleased that you are holding this hearing because I believe it is essential that this Committee give deliberate, thoughtful consideration to legislation proposed in response to the terrorist attacks on our nation. I look forward to hearing from the Attorney General this morning and to working with him and his staff in formulating legislative changes that are both effective and respectful of our cherished constitutionally protected freedoms. Thank you.

Statement of Hon. Chuck Grassley, a U.S. Senator from the State of Iowa

Mr. Chairman, before I begin with my comments on combating terrorism, I think it is important to commend the congressional leadership of both parties for the way in which they have banded together in a unified front to support the President and the country. I wish we could approach all of the nation's business with such a cooperative spirit.

I also want to specifically commend Attorney General Ashcroft, Director Mueller and all the dedicated men and women at the Department of Justice and FBI for their hard work in investigating the recent terrorist attacks perpetrated on New York and the Pentagon. The law can be improved to provide certain tools for law enforcement that will be beneficial for them to possess in their effort to investigate and punish those who perpetrate acts of terror. I'm glad that we're holding today's hearing to discuss the Justice Department's proposal.

President Bush also deserves a great deal of praise for the steady and thoughtful way that he has lead the country during this time of confusion and grief. His decision to create an Office of Homeland Security is a good first step in the effort to prevent terrorist acts from occurring here again, and naming Governor Ridge as its first director was a particularly good choice. This cabinet level office will be able to help remedy the problems of inadequate communication and coordination that currently exists between federal, state and local governments and international agencies dedicated to combating terrorism. I'm glad to see that the President did not place the coordination of all our federal anti-terrorism efforts in one department or agency, but wisely recognized the important work that is not only performed by the Justice Department, but also the State Department, the Treasury Department, the Department of Defense, and many others that contribute to the counter-terrorism effort.

This agency will go a long way toward protecting our shores, but we need the intelligence that will alert us to terrorist attempts on the United States long before they are attempted. It's time to reconsider and change the way we conduct our war against these killers. No longer can we rely solely on superior technology or military

might. It's just not enough. When you are facing an enemy who is willing to die when he attacks you, who is totally and utterly committed to your destruction at any cost, you must use all the resources and methods at your disposal.

We're not doing that. Our battle against terror has been missing the "human intelligence" factor for about six years. By this, I mean the United States lacks any kind of extensive network of informants inside terrorist organizations.

Since 1995, the CIA and the entire intelligence and law enforcement community have been working with one hand tied behind their backs because of restrictive rules about recruiting informants and spies. These rules prohibit recruiting and paying intelligence agents who have committed terrorist acts or other crimes, or human rights abuses. These agents, often called "unsavory characters," are an essential element of human intelligence. Maybe these rules seemed to make sense at the time, but not anymore. We just can't afford it. The recommendation to use human intelligence, which is now absolutely necessary, isn't brand-new. We've been hearing this for years from a broad coalition of law enforcement and intelligence officials, elected leaders, and experts in the private sector and academics.

In addition to changing the rules on the use of unsavory characters, there are a number of changes that the Department of Justice has asked this Committee to consider. Well, I agree that there are a number of changes in the law that can better promote effective detection, investigation and punishment of terrorists. I'd like to touch on some of what I see to be the more important changes.

The first change that is needed is an expanded ability to conduct electronic surveillance. While we contemplate the proposed enhancements to wire-tap laws and electronic surveillance procedures, we must be careful to strike a delicate balance between preserving our citizen's constitutional liberties and providing federal law enforcement with the proper tools to do their jobs. We must also be mindful of the possible consequences of crafting immediate remedies to assist in this particular terrorism investigation. We have a duty not only to this generation, but to the generations to follow, to deliberate these matters carefully and with an eye toward their long-term impact. Yet at the same time, we need to work in an expeditious manner to produce legislative proposals to help our law enforcement community protect our country in this time of war against terrorism. Have no doubt, this is serious business. The threat is immediate. We are at war.

Most of the Justice Department wire-tap proposals currently on the table appear to be common sense enhancements that our law enforcement agencies need to even the playing field in the battle against terrorism and to keep up with the rapid changes in communications technology. Some have raised constitutional questions about some of these proposals. We should look carefully at these provisions. I say this because history teaches us that the application of these laws can be problematic. In addition, once legislative changes are made, Congress has an oversight responsibility to ensure that the law is properly followed. An example of this is the current matter of the Department of Justice issuing a subpoena for the telephone toll records of a member of the news media. This is a circumstance where the Department of Justice believes that the public's interest in a free press is outweighed by their interest in effective law enforcement. I've taken issue with whether the Department properly followed internal procedures and applied those procedures in this matter, and I continue to await their response to my inquiry.

I believe it's also essential that Congress take action to strengthen the tools that are currently available to find and halt money laundering. Money laundering isn't a new challenge, nor is it a simple one. It isn't something the United States can do alone, but neither is it a case where we need to depend on others before we can act. Before September 11, the Senate had two good proposals on the table. They were good ideas then. They are priorities now.

The bill that we are discussing here today contains a few proposals that will strengthen existing law enforcement options. I'm pleased to see these, but I think the entire section would be strengthened by adopting the legislation introduced by Senators Kerry and Levin. I'm a co-sponsor of each of these bills, and I urge the committee to join me in adding them to this piece of legislation. Mr. Chairman, I will speak more on the specifics later. But for now, suffice it to say, we need to combine all our strengths and capabilities. Circumstances demand meaningful action now, and these bills give us important tools for our tool kit.

Finally, it's my hope that the INS will be able to work with other agencies to protect United States citizens from international threats. We need to enhance cooperation among the agencies to better coordinate our efforts and better enforce the systems we have in place. Last Friday, my colleagues and I introduced bipartisan legislation that would provide the INS and State Department access to criminal records maintained by the FBI. Action on this legislation can and should be taken right away.

In the meantime, terrorists are taking advantage of our immigration system. They roam freely within our borders under the radar screen of the INS. While there is unanimous agreement that we must secure our borders, I strongly believe that our government needs to more closely monitor those we have let in. For example, the INS can act on simple visa violations and document discrepancy rules which the terrorists exploited.

America will continue to be a nation of immigrants and a land of possible dreams. And we will show the rest of the world that democracy will prevail.

Nevertheless, we will have to make changes in our current policies so that our intelligence and law enforcement agents will have an increased ability to prevent another day like September 11, 2001. We must continue this cooperative effort to make sure that our intelligence and law enforcement agencies have the resources they need to combat terrorism. In doing that, we need to consider how the federal government can benefit from involving state and local law enforcement in this effort. My office is already receiving calls from state and local police in Iowa asking how they can help. Likewise, we need to make sure that they have the training and resources they need to assist in this effort. We're all in this boat together. This is a fight for all Americans and as such we on this committee should cooperate with the administration to ensure that federal law enforcement has every tool it needs and that the Constitution allows in this fight against terrorism.

Statement of Hon. Edward M. Kennedy, a U.S. Senator from the State of Massachusetts

Mr. Chairman, thank you for holding today's hearing on these very important issues involving the security of our country.

Two weeks ago today, the nation was attacked by terrorists who sought to disrupt our government and our way of life. But they failed and they will always fail. Our country has never been more united behind the ideals that make us strong, or more committed to protecting our security.

Those who murder American citizens must find no hiding place, and those who harbor terrorists must pay the price. America must be decisive and effective in apprehending terrorists and identifying and punishing those who give them support.

Congress has already approved a strong bipartisan resolution authorizing the use of force. Any terrorist attack of this scale is a declaration of war on the American people, and our nation should respond accordingly. However, we cannot and must not be indiscriminate. We can only act when we are certain who the perpetrators of this atrocity are.

The President has wisely concluded that we should not limit our response to military action. We need to make full use of the many other resources at our disposal, particularly international intelligence and international cooperation, in order to identify and eliminate the networks of terrorists operating around the world.

Continuing alliances with other nations in all parts of the world will be indispensable in achieving these all-important goals. In our effort to end support for terrorism, we will need the assistance of allies throughout the world. We must act in our national interest, but we must recognize our allies' concerns as well.

In pursuing our international efforts, we need to be especially mindful of the complex relationships in the Middle East, and we need to take the views of the governments and peoples in the region into consideration. We need to consider how our actions will affect them. We want them to work with us as we proceed with our efforts against the perpetrators of the terrorist attacks, and we will need their assistance and cooperation to succeed.

We know we will continue to be vulnerable to terrorist attacks on our own soil. The need is urgent to improve all aspects of our domestic security. That's why it's especially urgent and important to strengthen our intelligence capabilities, so that we can identify possible future attacks in their planning stages and prevent them from happening.

It is clear that Congress must provide the FBI and other law enforcement agencies with additional powers to identify terrorists and those who support terrorism. We must update our surveillance laws to deal with new technologies and new patterns of behavior by terrorist organizations. At the same time, we must maintain the dividing line that separates surveillance powers in foreign intelligence gathering, and surveillance powers used against Americans.

It is clearly appropriate to increase criminal penalties for those who engage in or support terrorist activity. We must be careful, however, to see that these laws apply

only to terrorists—not, for example, to Americans engaged in protest activities unrelated to terrorism. We must also see that the courts retain appropriate authority to supervise the conduct of law enforcement.

As we respond to the current crisis, we must do so in ways that protect the nation's ideals and the basic rights and liberties of our citizens.

Similarly, the INS and the State Department must have the tools and the intelligence information they need to make informed and accurate decisions on visa applications and the admission of foreign nationals into the United States. Current security programs must be fully implemented, and Congress must allocate the funds to do so.

The INS has broad authority to act against any foreign national who supports terrorism. With respect to visitors, foreign students, and other non-immigrants, as well as immigrants already here, the federal government has a broad range of enforcement tools. The INS may detain certain non-citizens if they pose a threat to national security or are a flight risk, and they may do so on the basis of secret evidence. The INS may also deport any alien who has engaged in terrorist activity, or supported terrorist activity in any way. Clearly, the INS must use its existing authority fully and fairly.

Nonetheless, loopholes may exist in our current laws and changes may well be needed. I look forward to working with the Administration to develop careful and thoughtful measures that give the Department of Justice the authority needed to detain suspected terrorists, without violating basic rights and liberties.

We must be cautious that new measures are not enacted in haste, altering current immigration law in critical and constitutionally troubling respects. We must avoid enacting legislation that subjects non-citizens to deportation, without providing them with notice of the charges against them.

I am concerned about the proposed expansion of the Attorney General's authority to detain and remove even lawful permanent residents, if there is reason to believe they could in the future facilitate terrorism. This action can be taken without probable cause or reasonable suspicion, and with very few due process protections.

The President and members of Congress on both sides of the aisle have spoken eloquently about the need to focus our attention on the perpetrators of these vicious acts, not on innocent persons. The immigration laws we enact must target the perpetrators or supporters of terrorist activities. We must avoid sweeping changes that harm the innocent and diminish the civil rights and liberties of all Americans.

In the wake of the September 11th attacks, we have seen a disturbing increase in hate-motivated violence directed at Arab and Muslim Americans. The Department of Justice is currently investigating over 50 such incidents, including several murders.

We need to do more to combat the acts of hate that cause many Arab and Muslim Americans to live in fear. Under current law, the Department of Justice cannot prosecute such cases as hate crimes unless it can prove that the victim was engaged in one of six "federally protected activities"—such as voting or attending a public university—when the crime occurred. This requirement is an unwise and unnecessary constraint on effective law enforcement and may hamper the Department's ability to prosecute some of the cases it is now investigating.

The bipartisan hate crimes bill passed by the Senate last year and approved again by the Judiciary Committee in July would remove the "federally protected activity" requirement from the law—making it easier for the Justice Department to prosecute hate crimes—while still ensuring that the federal government is only involved when necessary and appropriate.

Now is the time for Congress and the President to send a strong and unequivocal message to the American people that hate-motivated violence in any form will not be tolerated in our nation.

I'm confident that Congress and the President can work together to pass a tough, comprehensive, and balanced antiterrorism bill. The important work we do now and in the coming weeks will make America proud of its ideals.

Thank you, Mr. Chairman, and I look forward to the Attorney General's testimony.

Statement of Hon. Jon Kyl, a U.S. Senator from the State of Arizona

I commend the Chairman for wasting no time in calling this hearing on the counter-terrorism recommendations presented to Congress by the Attorney General

last week. As we are all aware, we are in a race to ensure the safety and security of our citizens, and there is literally no time to lose.

Sadly, the events of September 11 demonstrated, as no other recent occurrence has been able to do, that we must put aside the typical, painfully-slow process that often seems to rule here in times of peace. We cannot continue to yield the advantage of time to those who will continue to murder Americans and our allies until we stop them.

Fortunately, we are not rushing forward with ill-conceived legislation. We are finally putting in place important tools that will enable our nation's law-enforcement personnel to more effectively investigate and prevent further attacks on the people of the United States. Since September of 1998, the Senate Judiciary Committee or its Subcommittee on Technology, Terrorism and Government Information has held thirteen hearings on terrorism. The witnesses who appeared before the Committee in those hearings included Louis Freeh, former Director of the FBI, and representatives of all three of the congressionally-mandated commissions on terrorism that have issued reports over the last two years.

Most of the provisions contained in the Attorney General's proposed legislation have already been examined by the committee of jurisdiction. These provisions mirror the recommendations of one or more of the major terrorism commissions. In fact, some of these provisions have already been voted on and passed by the Senate.

The language sent forward by the Attorney General to establish nationwide trap and trace authority is included, verbatim, in the Hatch-Feinstein-Kyl Amendment to the recently passed Commerce, Justice, State Appropriations Bill. Much of the remaining language in that amendment was included in a bill we passed in the Senate last fall, entitled the "Counterterrorism Act of 2000." We passed that bill, S. 3205, after significant debate and numerous hearings.

Nearly a year after we passed it the first time, and two full weeks after the unspeakable acts of terror that occurred on September 11, we still have members of this body dragging their feet and saying we are moving too quickly to pass counterterrorism legislation. Thursday's New York Times included an article that quoted one of my colleagues saying he, "would not be rushed, noting that Congress took almost two months to pass antiterrorism legislation in response to the Oklahoma City bombing in 1995."

I appreciate the fact that some of my colleagues do not like to be rushed, but we are talking about legislation that has been requested by both Democratic and Republican administrations (and debated ad nauseum) since 1995. Some of it, the Senate has already voted to enact. My friends, taking two months to pass antiterrorism legislation in response to the Oklahoma City bombing is not something of which we should be proud. And if we take another two months to act after an even more heinous act of terrorism, we will be giving terrorists who are already around the first turn, a full lap advantage in this race. That is not what the American people are expecting from their leaders at this time.

Let me address briefly the concerns voiced by some of my colleagues. Namely, that we are in danger of "trampling civil liberties" in our rush to pass counter-terrorism legislation. I reiterate that we are not rushing. The legislation we have already passed, and the legislation now offered by the administration, was under consideration long before the events of September 11. We have already held numerous hearings on these issues. Most importantly, there is nothing being requested that broadly impinges on the rights and liberties of U.S. citizens or raises any constitutional questions.

Most of what is being requested would give federal agencies fighting terrorism the same tools we have given those fighting illicit drugs, or even postal fraud. In most instances, the Attorney General is not asking for new authority, he is simply asking to apply existing authority to the crime of terrorism. The powers requested, in almost every case, would be subject to the ruling of a federal judge before action could be taken by law-enforcement personnel. That is entirely consistent with the system of checks and balances provided by the Constitution.

I support the request of the Attorney General, and I urge my colleagues to give this body due credit for the work that has already been done over the last six years, in several committees, to bring credible counter-terrorism legislation to the floor. I urge the Senate conferees to the upcoming Commerce, Justice, State appropriations conference to support the carefully-crafted language included in the Hatch-Feinstein-Kyl Amendment. We have a responsibility to the people of this nation to act, and to act with all prudent haste, to ensure that those who are charged with protecting us from future terrorist attacks are empowered to do so.

My friends, we cannot afford to lose this race against terror, and we cannot afford to give the enemy in this war a full lap head-start.

Statement of Hon. Carl Levin, a U.S. Senator from the State of Michigan

Over the past 3 years the Permanent Subcommittee on Investigations, which I chair, has conducted an extensive investigation into the use of U.S. banks for money laundering purposes. We've held three sets of hearings and produced two extensive reports as well as a five volume record on how correspondent banking can be used as a tool of money laundering. To address the problems we uncovered, I have, along with colleagues from both parties—Senators Grassley, Sarbanes, DeWine, Bill Nelson, Kyl and Durbin—sponsored S. 1371, the Money Laundering Abatement Act. I hope the Committee will include the provisions of S. 1371 in the antiterrorism bill now being considered.

A consensus has emerged that any effective anti-terrorism campaign must include tracking the money supply that funds terrorism and shutting it down. Disrupting terrorists' financial networks is vital to ending their ability to carry out massive terrorist operations like the September 11th tragedy.

One financial network involves correspondent banking. Correspondent banking occurs when one bank has an account at another bank in order to be able to transfer funds between the two banks. For example if a bank in London has a client who wants to be able to have dollars available to him or her in the United States, the London bank needs a correspondent account with a U.S. bank to make those dollars available in the U.S. That means the U.S. bank has to agree to open and manage an account for the London bank.

We found that U.S. banks often did an inadequate due diligence review of foreign banks seeking to open a correspondent account in the U.S. Too often the U.S. banks assumed—and we heard this verbatim—that a bank is a bank is a bank. But that's not the reality. There are good banks and there are bad banks, and we found numerous situations where U.S. banks held accounts for foreign banks engaged in criminal activity or with such sloppy banking practices that they provided an open invitation for criminals to bank with them. Criminals can then use these bad banks to gain access to the U.S. banking system through their U.S. correspondent accounts. My bill aimed at tightening the systems allowing foreign banks to open correspondent accounts at U.S. banks.

Another tool for moving illicit funds is a shell bank. Shell banks are unaffiliated with any other bank and have no physical presence in any jurisdiction. They are licensed by a handful of jurisdictions around the world including Nauru, Vanuatu and Montenegro. My Subcommittee's investigation found that shell banks carry the highest money laundering risks in the banking world because they are inherently resistant to effective oversight. There is no office where a bank regulator or law enforcement official can visit to observe bank operations or review documents. Essentially no one but the shell bank's owners know what the bank is up to. Our staff report provides four detailed case histories of shell banks that opened U.S. correspondent accounts and used them to move funds related to drug trafficking, bribe money and financial fraud money. The possibility that terrorists are using such banks to conduct their operations is one that cannot be ignored.

S. 1371 would make a number of important changes in our money laundering laws.

Unidentified Foreign Accountholders. It would require U.S. banks and U.S. branches of foreign banks opening or managing a bank account in the United States for a foreign person to keep a record in the United States identifying the account owner.

Foreign Shell Banks. It would bar U.S. banks and U.S. branches of foreign banks from providing direct or indirect banking services to foreign shell banks that have no physical presence in any country and no bank affiliation.

Foreign Private Bank and Correspondent Accounts. It would require U.S. banks and U.S. branches of foreign banks that open a private bank account with \$1 million or more for a foreign person, or a correspondent account for an offshore bank or foreign bank in a country posing high money laundering risks, to conduct enhanced due diligence reviews of those accounts to guard against money laundering.

Foreign Bank Forfeitures. It would modify forfeiture rules for foreign banks' correspondent accounts by making a depositor's funds in a foreign bank's U.S. correspondent account subject to the same civil forfeiture rules that apply to depositors' funds in other U.S. bank accounts.

Foreign Corruption. It would expand the list of foreign crimes triggering a U.S. money laundering offense to include foreign corruption offenses such as bribery and misappropriation of government funds.

Prosecution Assistance. It would make it easier for prosecutors to prosecute money laundering cases by giving them such basic tools as simpler pleading requirements, clear long-arm jurisdiction over foreign money launderers acting inside the United States, easier ways to serve legal papers on foreign banks with U.S. accounts, and the assistance of court-appointed federal receivers to find money laundering assets hidden at home or abroad.

Enactment of this legislation is critical if we are to stop terrorists and other criminals from benefiting from the safety, soundness, efficiency and profitability of the U.S. banking system. In addition, we need to galvanize the international community to join us in our efforts to chase down terrorist assets and deny terrorists access to international financial networks.

We must deny terrorists access to our banks, to our credit cards, to our stock brokers and to all of the other modern financial tools we've developed to move money around the world. This committee plays an important role in that effort, and I appreciate the opportunity to present these prepared remarks.

Statement of LPA, Inc., Washington, D.C.

Mr. Chairman and Members of the Committee:

LPA applauds the bipartisan efforts of this committee and the Congress to make prompt and appropriate changes to federal investigative and law enforcement authority to effectively detect, combat and stop terrorism against the United States. Our members stand ready to assist the Committee, Congress and the Bush Administration to do our part to prevent terrorist attacks from occurring on U.S. soil and elsewhere around the globe. We are pleased to submit this testimony to provide our members' perspectives on how these initiatives relate to employer communications networks, the fight against cyberterrorism, and the monitoring of workplace communications.

LPA is an association of the senior human resource executives of more than 200 leading corporations in the United States. LPA's purpose is to ensure that U.S. employment policy supports the competitive goals of its member companies and their employees. LPA member companies employ more than 12 million employees, or 12 percent of the private sector workforce. Our members have a substantial interest in how criminal law, such as the Electronic Communication Privacy Act, also known as the Wiretap Act, affects their policies with respect to their telephone and computer networks and facilitates their ability to cooperate with law enforcement officials where necessary.

PREVENTING CYBERTERRORISM AGAINST EMPLOYERS

LPA recently held discussions with its members regarding the employment-related issues that arose in the aftermath of the Attack on America. One of the questions raised was how employers should deal with the threat of cyberterrorism. As you know, the terrorists that perpetrated the attacks were computer savvy, and it is not unrealistic to speculate that terrorists may look to attack computer networks at some point in the future.

Recent news articles have indicated that the proposed anti-terrorism legislation would make it easier for federal law enforcement authorities to access the voice mail and e-mail messages of suspected terrorists. In addition to this authority, LPA members would appreciate any assistance that the federal government could provide in detecting and eliminating the threat of cyberterrorism. Although our members are sophisticated and have elaborate computer security procedures, it would be helpful if the government could set up a clearinghouse employers could access for unclassified information on cyberterrorism. It would also be helpful if victims of cyberterrorism could request help from federal investigative authorities when electronic foul play is suspected.

We understand from news accounts that there is a limited provision along these lines in the legislation drafted by the Justice Department. LPA urges the committee to review this issue either now or at some point in the future to prevent an attack that could have severe economic implications for individual companies and the country as a whole. Working together the private sector and the federal government can be a formidable force against terrorist acts.

EXPANDED WIRETAP AUTHORITY AND ELECTRONIC MONITORING BY EMPLOYERS

The news articles describing the anti-terrorism legislation also have indicated that the legislation would allow investigators to monitor the suspect's Internet or e-mail provider anywhere in the country by securing the approval of a judge in one jurisdiction. Presumably, an employer that maintains a voice mail, e-mail and Internet service that its employees use for business would be considered an Internet or e-mail provider under the legislation, meaning that employers may be required to provide access to their electronic systems in the interest of law enforcement. The need for such authority is understandable following the atrocities of September 11.

However, LPA wants to ensure that in the course of providing investigators access to this vital information, the anti-terrorism legislation does not impose unnecessary burdens on an employer's ability to monitor workplace communications. We do not believe that now is the time to engage in such a debate. Additionally, statistical and anecdotal information demonstrates that there is no need for such requirements.

Employers monitor their employees' use of workplace electronic communications primarily to protect against legal liability. According to a 2001 American Management Association survey,¹ 62 percent of employers engage in some type of computer and Internet monitoring and 68 percent of those monitor to protect against legal liability, especially liability based on sexual harassment. Employers also monitor to protect the security of company assets and maintain productivity. Defense contractors monitor to protect against leaks of classified information, and other employers seek to eliminate online gambling, excessive day trading, and participation in online auctions. Employers have even found employees running separate businesses using company-provided Internet service.

According to the AMA survey, nearly 90 percent of employers who monitor their employees give them notice. Employer notice helps educate employees about the employer's policy and reduces improper use of the employer's computer and telephone systems. In addition, this notice ensures that employees do not have false expectations of privacy.

Although the vast majority of employers provide their employees with notice of their monitoring practices, there have been recent legislative attempts to impose limits on how employers may monitor their employees. It would be unfortunate if, in the rush to complete action on the terrorism legislation, the committee also added language that imposed unnecessary burdens on employer monitoring practices. LPA believes instead that Congress should focus on the task at hand: completing the terrorism legislation and grappling with the other issues raised by the September 11 attacks.

CONCLUSION

Mr. Chairman, LPA supports your efforts to provide the tools needed by federal law enforcement and intelligence agencies to eliminate the threat of terrorism in the United States. We recommend that either now or in the near future, you look for ways to provide useful information and resources to employers on cyberterrorism. We also urge you to pursue your objective without imposing unnecessary burdens on employers' current workplace monitoring practices. LPA stands by to do our part in this important effort and in the larger war against terrorism.

Statement of Hon. Jeff Sessions, a U.S. Senator from the State of Alabama

Mr. Chairman, I commend you for holding this hearing on homeland defense and calling the Attorney General and other members of the Justice Department to testify before this Committee. The Justice Department's antiterrorism bill is very important legislation before Congress, and we would be remiss in our duty not to address it as a top priority. Our goal must be to review current law and see if there are weaknesses or gaps that hamper our nation's effort to protect its citizens without eroding our great constitutional protections.

¹American Management Association, 2001 AMA Survey: Workplace Monitoring & Surveillance: Policies and Practice, Aug. 2001, available at <<http://www.amanet.org/research/pdfs/emsfu-short.pdf>>.

CENTER FOR DOMESTIC PREPAREDNESS

But before I address the anti-terrorism bill, I wanted to call the attention of the Committee to the non-controversial and until yesterday, littleknown Center for Domestic Preparedness (CDP) in Anniston, AL. Yesterday, however, it was the subject of a front page article in the *Wall Street Journal*.

The CDP trains first responders—firefighters, police officers, and emergency medical professionals—including first responders in New York and Washington, to deal with chemical, biological, nuclear, explosive and other weapons of mass destruction. Located on the former U.S. Army base of Fort McClellan, the CDP is the only facility in the United States that conducts live-agent training of first responders for chemical and biological weapons.

I have been to the CDP on several occasions. It is a world-class facility, and as others are discovering, an invaluable asset in our fight against chemical and biological terrorist attacks.

The threat of chemical and biological terrorist attacks is very real. Yesterday, the Attorney General testified to the House Judiciary Committee that the FBI has evidence that one of the hijackers and perhaps other suspected terrorists had obtained information about crop dusters. The FBI alerted and the FAA grounded all crop dusters in the country this weekend because of the threat of chemical or biological attacks using crop dusters.

Also, yesterday the World Health Organization (WHO) rushed out its report on the HEALTH ASPECTS OF BIOLOGICAL AND CHEMICAL WEAPONS. The WHO report stated, “The magnitude of possible impacts on civilian populations of their use or threatened use obliges governments both to seek prevention and to prepare response plans.”

Last week, Virginia Governor James S. Gilmore, Chairman of the National Advisory Panel to Assess Domestic Response Capabilities to Terrorism, stated that “[a] biological attack is the most severe we can imagine. We have to take measures to protect ourselves.” See Karen Crummy, *War on Terrorism; Panel: Prepare to Thwart Bio Attack*, THE BOSTON HERALD, Sept. 18, 2001, at 30.

On September 12, 2001, the Congressional Research Service noted “[r]epeated U.S. government reports on the proliferation of CBW [chemical or biological weapons] technology and intelligence threat assessments that anticipate a CBW terrorist attack in the next decade.” Steve Bowman, CHEMICAL/BIOLOGICAL THREAT (Gong. Research Service Sept. 12, 2001).

Last year, the Center of Strategic and International Studies issued a report entitled, DEFENDING AMERICA IN THE 21ST CENTURY: NEW CHALLENGES, NEW ORGANIZATIONS, AND NEW POLICIES that assessed a credible and increasing threat that “terrorists ... can directly attack the United States’ homeland” and that the “resulting attack ... can ... exploit chemical, biological, radiological, or nuclear weapons” The report noted that the “potential use of biological agents—anthrax, plague, mycotoxins, for example—is particularly troubling.” (Emphases added.)

As reported on the front-page of the *Wall Street Journal* yesterday, the CDP has been funded sufficiently to train only 6,000 first responders in the last three years. There are currently 11 million first responders in America. See *Vulnerability Exposed, U.S. Confronts ‘Maze’ of Homeland Defenses*, WALL STREET JOURNAL, Sept. 24, 2001, at A1.

The Senate recently increased the funding for CDP from \$15 million to \$30 million. This will enable CDP to ramp up its capacity to train first responders to chemical and biological attacks from 2,500 first responders per year to 10,000 per year.

I intend to introduce legislation that will authorize the Department of Justice to expand the capabilities of the CDP to train even more first responders as our intelligence, awareness, and appreciation of the chemical and biological threat increases.

DOJ’S ANTI-TERRORISM BILL

In addressing the Department of Justice’s ability to combat terrorism in this country, the Senate must meet the needs of the Government in protecting our citizens while guarding the civil liberties of those citizens. Some have charged that the portions of the Justice Department’s anti-terrorism bill that expand the ability of law enforcement to conduct surveillance or deport aliens trample on our constitutional rights. See, e.g., *The Home Front Security and Liberty*, *New York Times*, Sept. 23, 2001, at 4:16; *Finding the Balance Between Liberty and Security*, TAMPA TRIBUNE, Sept. 20, 2001, at 18; *ACLU Says Congress Should Treat Administration Proposal Carefully; Says Many Provisions Go Far Beyond Anti-Terrorism Needs*, (visited on Sept 24, 2001) <<http://www.aclu.org/news/2001/n092001e.html>>.

Having spent 15 years as a federal prosecutor, I am somewhat familiar with the rules for obtaining pen registers, which allow law enforcement to track the numbers dialed by a phone, and administrative subpoenas, which allow law enforcement to obtain business and other records of a suspected criminal from third-parties such as banks and telephone companies.

Pen Registers—In *Smith v. Maryland*, 442 U.S. 735 (1979), the Supreme Court held that the use of pen registers by law enforcement to record *outgoing numbers* dialed from a telephone does not violate the Constitution because there is no reasonable expectation of privacy in numbers that are dialed out of a telephone. The telephone in a house sends electronic instructions through the phone lines to the telephone company. Thus, the numbers are not located in the house and no content of the conversations are collected. Pen Registers have long been used to gather this non-private information, and they do not infringe upon Fourth Amendment rights. 18 U.S.C. § 3121 et seq. This does not trample on the Constitution.

Administrative Subpoenas—In *SEC v. O'Brien*, 467 U.S. 735 (1984), Justice Thurgood Marshall wrote for a unanimous Supreme Court that the use of administrative subpoenas to gather records from third-party record holders does not violate the Fourth, Fifth, or sixth Amendment rights of a suspect. Such subpoenas are commonly used today in drug investigations and in child sexual abuse investigations. See 21 S.C.U.S.C. § 876; 18 U.S.C. § 3486. This does not trample on the Constitution.

Mobile Wiretaps—Further, the Justice Department's bill updates the wiretap statutes to follow targets of criminal investigation, not a single stationary telephone. The use of wiretaps that record the content of telephone conversations directly implicates the privacy interests protected by the Fourth Amendment. See *Katz v. United States*, 389 U.S. 347 (1967). The Justice Department's bill makes no attempt to change the constitutional standard for seeking a wiretap, only the geographical area over which a wiretap order applies. Thus, the order will follow the criminal whether he is using a land-line telephone in one location, or several cell phones in locations across the country. This bill will maintain the requirement that a judge approve of a wiretap before it is put in place. This does not trample on the Constitution.

Deportation of Aliens—The Justice Department's bill subjects aliens to deportation from the United States if they provide material support to a terrorist organization. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 491–92 (1999), the Supreme Court held that “when an alien's continuing presence in this country is in violation of the immigration laws, the Government does not offend the Constitution by deporting him for the additional reason that it believes him to be a member of an organization that supports terrorist activity.” While we should never punish a person because of his race, there is no constitutional impediment to deporting a non-citizen who supports terrorists. I note that the Justice Department's bill retains habeas corpus review for such aliens who are determined to be deportable. This is fully constitutional.

CONCLUSION

I commend Attorney General Ashcroft and the entire Department of Justice for the outstanding work they have done in crafting this legislation in such an expedited manner. I also commend him for working with Chairman Leahy and Ranking Member Hatch to address their concerns with this bill. By working together, we can act within our Constitution to increase the capabilities of the Government to fight terrorism and respect the civil liberties of our citizens. We will bring the rule of law to bear on those who believe they can escape its reach.

